

**CALIFORNIA'S
LAWS AND RULES
PERTAINING TO THE
DISCIPLINE OF PROFESSIONAL
CERTIFICATED PERSONNEL**



Published by
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Commission on Teacher Credentialing

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PREFACE

This publication is a collection of the statutes and regulations governing the issuance, denial, revocation, suspension, and other invalidation of credentials for reasons related to identification, moral character, and inappropriate conduct for credential applicants and holders. Except insofar as these issues are involved, this publication does not deal with other aspects of the education, professional preparation, or licensing of educators. Such matters are governed by other statutes and regulations and should be researched separately.

The relevant statutes and regulations are administered by the Commission on Teacher Credentialing and its statutory committee, the Committee of Credentials, in order to protect the public interest. Staff support is provided by the Division of Professional Practices. The Commission is empowered to deny the issuance of credentials to applicants who do not meet high character standards and to privately admonish, publicly reprove, revoke, or suspend the credentials of persons who, subsequent to the receipt of credentials, fail to maintain high standards of professional fitness and conduct.

This screening, monitoring and disciplinary process represents continuous improvement in the positive identification, detection, and tracking of persons whose presence in the public schools represents potential harm to school children and/or the educational process; and it has evolved into a system which provides a substantial measure of due process protection to certificated personnel.

Public school employers, parents and/or other private citizens may lodge complaints of misconduct or unfitness against credential holders and have these complaints investigated and judged on their merits. The investigative and deliberative processes are confidential until judgment is reached. This is in order to protect any persons who may be mistakenly or unjustly charged.

Questions about this process and rights available to complainants and respondents may be directed to:

**CALIFORNIA COMMISSION ON TEACHER CREDENTIALING
DIVISION OF PROFESSIONAL PRACTICES
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FOREWORD

This booklet is a collection of the most frequently cited provisions of the California Education Code, Government Code, Penal Code, Code of Regulations, and related materials which govern the imposition of adverse action and professional discipline against California credential applicants and holders. It is not intended to be used in place of official law publications. Any conflicts in legal authority should be resolved in favor of official legal publications.

Substantive authority to impose professional discipline is conferred upon the Commission on Teacher Credentialing by Articles 8 and 9 of Chapter 2 of Part 25 of Division 3 of Title 2 of the Education Code, also cited as the "Teacher Preparation and Licensing Act of 1970 as amended" or the "Ryan Act".

Procedural standards governing the imposition of professional discipline are set forth in Article 3 of Chapter 2 commencing at Section 44240 of the Education Code. Section 44246 expressly requires compliance with the Administrative Procedures Act [Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code] whenever a hearing is held to deny, suspend, or revoke a credential.

These statutory provisions are further clarified by the Administrative Regulations of the Commission on Teacher Credentialing in Chapter 3 of Part VIII of Title 5 of the California Code of Regulations commencing with Section 80300.

An understanding of the statutes and regulations governing teacher discipline would be incomplete without reference to the 1969 landmark decision of the California State Supreme Court in *Morrison v. State Board of Education* 1 Cal.3d 214; 82 Cal. Rptr. 175, which held that in order for revocation of a credential to be upheld, the conduct of the holder must indicate professional unfitness; that is, there must be a "nexus" between the holder's conduct and his or her ability to perform the duties associated with the credential held. The Morrison standards articulated by the Supreme Court in *Morrison* have been codified by the Commission on Teacher Credentialing in Section 80302 of Title 5 of the California Code of Regulations.

The appropriate evidentiary standard in professional licensing cases was articulated in 1982 in *Ettinger v. Board of Medical Quality Assurance* 135 Cal.App.3d 853, which held that the necessary level of proof to be required at the administrative level in order to revoke or suspend a license should be "clear and convincing to a reasonable certainty", and not merely a "preponderance of the evidence".

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44010	"Sex offense"
44011	"Controlled Substance Offense"
44012	Admissibility of record of conviction

44008 EFFECT OF TERMINATION OF PROBATION AND DISMISSAL OF ACCUSATION

(a) Except as provided in subdivision (b) of this section, a termination of probation and dismissal of an accusation or information pursuant to Section 1203.4 of the Penal Code shall not, for the purpose of this division, have any effect.

(b) Notwithstanding any other provision of this code, no person shall be denied a hearing solely on the basis that he has been convicted of a crime if he has obtained a certificate of rehabilitation under Section 4852.01 and following of the Penal Code, and if his probation has been terminated and the information or accusation has been dismissed pursuant to Section 1203.4 of the Penal Code.

44009 CONVICTION OF SPECIFIED CRIMES; DEFINITION

(a) A plea or verdict of guilty or finding of guilt by a court in a trial without a jury is deemed to be a conviction within the meaning of Sections 44425, 44436, irrespective of a subsequent order for probation suspending the imposition of a sentence or an order under Section 1203.4 of the Penal Code allowing the withdrawal of the plea of guilty and entering a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusations or information. The record of a narcotics offense, as defined in Section 44011, shall be sufficient proof of conviction of a crime involving moral turpitude for the purposes of Sections 44892, 44907, and 44923, and Sections 44932 to 44947, inclusive, relating to the dismissal of permanent employees.

(b) A plea or verdict of guilty, or finding of guilty by a court in a trial without a jury, or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of Section 44836 and 45123, irrespective of a subsequent order for probation suspending the imposition of a sentence or an order under Section 1203.4 of the Penal Code allowing the withdrawal of the plea of guilty and entering a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusations or information. The record of conviction shall be sufficient proof of conviction of a crime involving moral turpitude for the purposes of Sections 44892, 44907 and Sections 44932 to 44947, inclusive, relating to the dismissal of permanent employees.

44010 "SEX OFFENSE"

"Sex offense", as used in Sections 44020, 44237, 44346, 44425, 44436, 44836, 45123, and 45304, means any one or more of the offenses listed below:

(a) Any offense defined in Section 220, 261, 261.5, 262, 264.1, 266, 266j, 267, 285, 286, 288, 288a, 289, 311.1, 311.2, 311.3, 311.4, 311.10, 311.11, 313.1, 647b, 647.6, or former Section 647a, subdivision (a), (b), or (c), of Section 243.4, subdivisions (b), (c), and (d) of Section 311.2, or subdivision (a) or (d) of Section 647 of the Penal Code.

(b) Any offense defined in former subdivision (5) of former Section 647 of the Penal Code repealed by Chapter 560 of the Statutes of 1961, or any offense defined in former subdivision (2) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961, if the offense defined in those sections was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(c) Any offense defined in Section 314 of the Penal Code committed on or after September 15, 1961.

(d) Any offense defined in former subdivision (1) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961 committed on or after September 7, 1955, and prior to September 15, 1961.

(e) Any offense involving lewd and lascivious conduct under Section 272 of the Penal Code committed on or after September 15, 1961.

(f) Any offense involving lewd and lascivious conduct under former Section 702 of the Welfare and Institutions Code repealed by Chapter 1616 of the Statutes of 1961, if that offense was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(g) Any offense defined in Section 286 or 288a of the Penal Code prior to the effective date of the amendment of either section enacted at the 1975-76 Regular Session of the Legislature committed prior to the effective date of the amendment.

(h) Any attempt to commit any of the above-mentioned offenses.

(i) Any offense committed or attempted in any other state which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses.

(j) Any conviction for an offense resulting in the requirement to register as a sex offender pursuant to Section 290 of the Penal Code.

(k) Commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of the Welfare and Institutions Code, as repealed by Chapter 928 of the Statutes of 1981.

44011 "CONTROLLED SUBSTANCE OFFENSE"

"Controlled substance offense" as used in Sections 44346, 44425, 44436, 44836, and 45123 means any one or more of the following offenses:

- (a) Any offense in Sections 11350 to 11355, inclusive, 11361, 11366, 11368, 11377 to 11382, inclusive, and 11550 of the Health and Safety Code.
- (b) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punished as one or more of the above-mentioned offenses.
- (c) Any offense committed under former Sections 11500 to 11503, inclusive, 11557, 11715, and 11721 of the Health and Safety Code.
- (d) Any attempt to commit any of the above-mentioned offenses.

44012 ADMISSIBILITY OF RECORD OF CONVICTION

Any record of conviction of any applicant for, or holder of, a certification document, shall for the purposes of this division, be admissible in evidence in any civil action or administrative proceedings pertaining to the issuance, suspension or revocation of such certification document, any provision of law to the contrary notwithstanding.

RIGHTS AND DUTIES**44030 Failure to make reports****44030 FAILURE TO MAKE REPORTS**

Any principal, teacher, employee, or school officer of any elementary or secondary school who refuses or willfully neglects to make such reports as are required by law is guilty of a misdemeanor and is punishable by a fine of not more than one hundred dollars (\$100).

CRIMINAL RECORD SUMMARY

44237 Fingerprint; private school employees; criminal record information; list of teachers with revoked or suspended credentials; fees; confidentiality

44237 FINGERPRINT; PRIVATE SCHOOL EMPLOYEES; CRIMINAL RECORD INFORMATION; LIST OF TEACHERS WITH REVOKED OR SUSPENDED CREDENTIALS; FEES; CONFIDENTIALITY

Every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level shall require each applicant for employment in a position requiring contact with minor pupils who does not possess a valid credential issued by the Commission on Teacher Credentialing or is not currently licensed by another

state agency that requires a criminal, record summary that directly relates to services provided in a facility described in this section and has background clearance criteria that meets or exceeds the requirements of this section, to submit two sets of fingerprints prepared for submittal by the employer to the Department of Justice for the purpose of obtaining criminal record summary information from the Department of Justice and the Federal Bureau of Investigation.

(b)(1) As used in this section, "employer" means every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level.

(2) As used in this section, "employment" means the act of engaging the services of a person, who will have contact with pupils, to work in a position at a private school at the elementary or high school level on or after September 30, 1997, on a regular, paid full-time basis, regular, paid part-time basis or paid full- or part-time seasonal basis.

(3) As used in this section, "applicant" means any person who is seriously being considered for employment by an employer.

(4) This section does not apply to a secondary school pupil working at the school he or she attends or a parent or legal guardian working exclusively with his or her children.

(c)(1) Upon receiving the identification cards, the Department of Justice shall ascertain whether the applicant has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the department and forward the information to the employer submitting the fingerprints no more than 15 working days after receiving the identification cards. The Department of Justice shall not forward records of criminal proceedings that did not result in a conviction but shall forward information on arrests pending adjudication.

(2) Upon implementation of an electronic fingerprinting system with terminals located statewide and managed by the Department of Justice, the Department of Justice shall ascertain the information required pursuant to this subdivision within three working days. If the Department of Justice cannot ascertain the information required pursuant to this subdivision within three working days, the department shall notify the employer submitting the fingerprints that it cannot so ascertain the required information. This notification shall be delivered by telephone or electronic mail to the employer submitting the fingerprints. If the employer submitting the fingerprints is notified by the Department of Justice that it cannot ascertain the required information about a person, the employer may not employ that person until the Department of Justice ascertains that information.

(3) The Department of Justice shall review the criminal record summary it obtains from the Federal Bureau of Investigation to ascertain whether an applicant for employment has a conviction, or an arrest pending final adjudication, for any sex offense, controlled substance offense, crime of violence, or serious or violent felony. The Department of Justice shall provide written notification to the private school employer only as to whether an

applicant for employment has any convictions, or arrests pending final adjudication, for any of these crimes.

(d) An employer shall not employ a person until the Department of Justice completes its check of the state criminal history file as set forth in this section.

(e)(1) A person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level shall not employ a person who has been convicted of a violent or serious felony or a person who would be prohibited from employment by a public school district pursuant to any provision of this code because of his or her conviction for any crime.

(2) A person who would be prohibited from employment by a private school pursuant to paragraph (1) may not, on or after July 1, 1999, own or operate a private school offering instruction on the elementary or high school level.

(f) An employer shall request subsequent arrest service from the Department of Justice as provided under Section 11105.2 of the Penal Code.

(g) This section applies to any violent or serious offense which, if committed in this state, would have been punishable as a violent or serious felony.

(h) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(i) Notwithstanding subdivision (e), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(j) Notwithstanding subdivision (e), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a serious felony that is not also a violent felony if that person can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one year. If the offense in question occurred outside this state, then the person may seek a finding of rehabilitation from the court in the county in which he or she is a resident.

(k) The Commission on Teacher Credentialing shall send on a monthly basis to each private school a list of all teachers who have had their state teaching credential revoked or suspended. The list shall be identical to the list compiled for public schools in the state. The commission shall also send on a quarterly basis a complete and updated list of all teachers who have had their teaching credentials revoked or suspended, excluding teachers who have had their credentials reinstated, or who are deceased.

(l) The Department of Justice may charge a reasonable fee to cover costs associated with the processing, reviewing, and supplying of the criminal record summary as required by this section. In no event shall the fee exceed the actual costs incurred by the department.

(m) Where reasonable access to the statewide, electronic fingerprinting network is available, the Department of Justice may mandate electronic submission of the fingerprints and related information required by this section.

(n) All information obtained from the Department of Justice is confidential. Agencies handling Department of Justice information shall ensure the following:

(1) No recipient shall disclose its contents or provide copies of information.

(2) Information received shall be stored in a locked file separate from other files, and shall only be accessible to the custodian of records.

(3) Information received shall be destroyed upon the hiring determination in accordance with subdivision (a) of Section 708 of Title 11 of the California Code of Regulations.

(4) Compliance with destruction, storage, dissemination, auditing, backgrounding, and training requirements as set forth in Sections 700 through 708, inclusive, of Title 11 of the California Code of Regulations and Section 11077 of Penal Code governing the use and security of criminal offender record information is the responsibility of the entity receiving the information from the Department of Justice.

COMMITTEE OF CREDENTIALS

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44240 APPOINTMENT AND COMPOSITION OF COMMITTEE OF CREDENTIALS; TERMS

The commission shall appoint a Committee of Credentials, consisting of seven persons for terms fixed by the commission but not to exceed two years.

The committee shall include:

- (a) One member who shall be a full-time certified classroom teacher in the public elementary schools with not less than five years' classroom experience.
- (b) One member who shall be a full-time certified classroom teacher in the public secondary schools with not less than five years' classroom experience.
- (c) One member who shall be a certified administrative employee in the public schools.
- (d) One member who shall be a member of the governing board of any school district. No person who is or has been employed in a certificated position in the public schools within the preceding five years shall be appointed as a school board member.
- (e) Three members who shall be representatives of the public. No person who is or has been employed in a certificated position in the public schools or who is or has been a member of any governing board of a school district or county board of education within the five years next preceding date of appointment shall be appointed as a public member.

The additional public members of the committee provided for in this section as amended during the 1977-78 Regular Session, shall be appointed by the commission as vacancies in the committee occur, consistent with the requirements of professional representation. Appointments to the Committee of Credentials shall reflect, to the extent feasible, the ethnic and cultural diversity of California public schools.

44241 FUNCTIONING OF COMMITTEE: APPLICABLE SECTIONS

Sections 44215, 44216, 44217, 44218, 44220, and 44221 are applicable to the Committee of Credentials.

44242 SUPERVISION OF COMMITTEE BY COMMISSION

The Committee of Credentials shall be under the direct supervision of the commission.

44242.5 PRESENTATION OF ALLEGATIONS THAT MAY BE GROUNDS FOR DENIAL, SUSPENSION OR REVOCATION OF CREDENTIAL; JURISDICTION OF COMMITTEE; INVESTIGATION; PROBABLE CAUSE DETERMINATION; REPORT OF FINDINGS

(a) Each allegation of an act or omission by an applicant for, or holder of, a credential for which he or she may be privately admonished, publicly reproofed or for which his or her application or credential may be denied, suspended, or revoked shall be presented to the Committee of Credentials.

(b) The committee has jurisdiction to commence an investigation upon receipt of any of the following:

(1) Official records of the Department of Justice, of any law enforcement agency, of any state or federal court, and of any other agency of this state or another state.

(2) An affidavit or declaration signed by person or persons with personal knowledge of the acts alleged to constitute misconduct.

(3) A statement from an employer notifying the commission that a credential holder has been dismissed, has been suspended for more than 10 days, has resigned, or has otherwise left employment because of the allegation of misconduct.

(4) A notice from an employer that a complaint was filed with the school district alleging sexual misconduct by a credential holder. Results of an investigation by the committee based on this paragraph shall not be considered for action by the committee unless there is evidence presented to the committee in the form of a written or oral declaration under penalty of perjury that confirms the personal knowledge of the declarant regarding the acts alleged to constitute misconduct.

(c) The committee shall investigate each allegation. Upon commencement of an investigation the committee shall investigate all alleged misconduct and the circumstances in mitigation and aggravation. The investigation shall include, but not be limited to, all of the following:

(1) Investigation of the fitness and competence of the applicant or credential holder to perform the duties authorized by the credential for which he or she has applied or which he or she presently holds.

(2) Preparation of a summary of the applicable law, a summary of the facts, contested and uncontested, and a summary of any circumstances in aggravation or mitigation of the allegation.

(3) Conduct of a meeting or hearing, in accordance with Section 44244, to consider allegations against an applicant or credential holder.

(4) Determination of probable cause for private admonition or public reproof or for denial, suspension, or revocation of the credential. If the allegation is for unprofessional or immoral conduct, the committee shall, in any meeting or hearing conducted pursuant to paragraph (4) to determine probable cause, permit the employer of the credential holder to be present while testimony is taken. If the allegation of unprofessional or immoral conduct involves sexual abuse, the employer shall be examined in the meeting for any relevant evidence relating to the sexual abuse.

(A) If the committee determines that probable cause for private admonition, or public reproof, or for denial, suspension, or revocation of the credential does not exist, the committee shall terminate the investigation.

(B) If the committee determines that probable cause for private admonition, or public reproof, or denial, suspension, or revocation of the credential exists, the committee shall initiate an adjudicatory hearing, as prescribed by Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code, by filing an accusation or statement of issues.

(d) The committee has jurisdiction to commence a meeting or hearing pursuant to Section 44244 upon receipt of any of the following:

(1) Official records of any state or federal court that reflect a conviction or plea, including a plea of nolo contendere to any criminal offense.

(2) An affidavit or declaration signed by a person or persons with personal knowledge of the acts alleged to constitute misconduct.

(3) A statement described in paragraph (3) of subdivision (b).

(4) Official records of any governmental licensing entity that reflect an administrative proceeding or investigation, otherwise authorized by law or regulation, which has become final.

(e)(1) Upon completion of its investigation, the committee shall report its actions and decisions to the commission, including its findings as to probable cause, and if probable cause exists, its recommendations as to private admonition or public reproof, or denial, suspension, or revocation of the credential. The findings shall describe the committee's concurrence or nonconcurrence with the facts reported in the investigation, the committee's determination as to what acts of misconduct by the credential holder or applicant occurred, and the relationship between the applicant or credential holder's misconduct and that person's ability or fitness to perform the duties for which he or she is certified or seeking certification.

(2) The findings shall be available, upon its request, to the employing or last known employing school district, or, where adverse action is recommended by the committee and a request is made within one year from the date the committee makes a recommendation, to a school district providing verification that the credential holder has applied for employment in the district. The findings shall, for all purposes remain confidential and limited to school district personnel in a direct supervisory capacity in relation to the

person investigated. Any person who otherwise releases findings received from the committee or the commission, absent a verified release signed by the person who is the subject of the investigation, shall be guilty of a misdemeanor.

(3) The findings shall not contain any information that reveals the identity of persons other than the person who is the subject of the investigation.

44242.7 TIME FOR PRESENTATION OF ALLEGATION; ADOPTION OF REGULATIONS SPECIFYING RECURRING CONDUCT

(a) Any allegation of an act or omission by the holder of a credential, except for an allegation that involved sexual misconduct with a minor or recurring conduct resulting in a pattern of misconduct, shall be presented to the Committee of Credentials within four years from the date of the alleged act or omission, or within one year from the date the act or omission should reasonably have been discovered.

(b) The Commission on Teacher Credentialing shall adopt regulations specifying conduct that is considered recurring conduct that results in a pattern of misconduct as set forth in subdivision (a).

44243 ASSIGNMENT OF ADMINISTRATIVE DUTIES

The commission may assign to the Committee of Credentials such administrative duties as it may see fit relating to the granting, issuance, suspension, and revocation of credentials and life diplomas; and to the private admonition of an applicant for, or the holder of, a credential. The commission shall supervise the work of the committee and shall provide statements of policy relative to committee operation and procedures as it deems appropriate to do so.

44244 ALLEGATIONS OF MISCONDUCT; PROCEDURES

(a) At least 30 days prior to any Committee of Credentials meeting or hearing at which the application or credential of a certified employee is to be considered, the committee shall notify the certified employee of the specific allegations of misconduct for which the application or credential may be denied, suspended, or revoked, or for which the employee may be privately admonished or publicly reprimanded, in ordinary and concise language setting forth the acts or omissions charged and the statutes or rules violated. Supplemental allegations of misconduct shall be sent to the certified employee at least 30 days prior to the meeting or hearing. The portions of the investigation of the original or supplemental allegations which constitute the basis for the allegations shall be open to inspection and copying by the employee and his or her attorney. The statement of the allegations shall inform the employee that the allegations, if true, are sufficient to cause his or her application or credential to be denied, suspended, or revoked, or to cause him or her to be privately admonished or publicly reprimanded.

(b) The investigation shall be commenced within 21 days after all allegations of misconduct have been filed with the committee and a meeting or hearing shall be scheduled no later than six months thereafter for the purpose of

making a determination either that no adverse action shall be taken; that the allegations are sufficient to cause his or her application or credential to be denied, suspended, or revoked; or that the allegations are sufficient to cause him or her to be privately admonished or publicly reprovved. All testimony before the committee shall be verified under penalty of perjury by oath or affirmation. The chairperson of the committee may administer the oath or affirmation. The chairperson may designate staff to administer the oath or affirmation for statements taken during the investigation of allegations of misconduct.

(c) Notwithstanding subdivision (b), the chairperson of the commission may grant the committee an extension of time, not exceeding six months, when the committee demonstrates that additional time is necessary to complete its investigation or determination, as described in subdivision (b).

(d) The recommended decision of the committee shall be in writing and a copy of the decision shall be delivered to the certified employee personally or sent to him or her by registered mail within 14 days after the meeting or hearing together with specific information relative to any administrative hearing to which the employee is entitled.

44244.1 ADOPTION OF COMMITTEE'S RECOMMENDATIONS BY COMMISSION; NOTICE; REQUEST FOR ADMINISTRATIVE HEARING; PRIVATE ADMONITION PROCEEDINGS

A recommendation by the Committee of Credentials to deny, suspend, or revoke an application or a credential of a certified employee or to issue a private admonition may be adopted by the Commission on Teacher Credentialing without further proceedings if, after service of notice of the committee decision pursuant to Section 44244, the certified employee fails to give notice of intent to request an administrative hearing or if he or she gives notice of intent not to request an administrative hearing within 30 days. All proceedings before the commission to consider a recommendation for issuance of a private admonition shall be held in executive session. The commission shall make no disclosures concerning private admonitions except as required by Section 44438. For good cause shown, the commission may grant an additional 30 days for filing of a request for an administrative hearing.

44245 SUSPENSION OR REVOCATION; CLOSED HEARING

All meetings and hearings of the commission and Committee of Credentials to consider the suspension or revocation of credentials shall be executive and closed sessions with only commission members, committee members, staff members, the certified employee whose application or credential is in issue, the counsel of such employee, and any material witnesses in attendance.

44246 COMPLIANCE WITH GOVERNMENT CODE

When a hearing is held to deny, suspend, or revoke a credential, the proceeding shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commission shall have all the powers granted therein.

44247 REEVALUATION OF APPLICATION

Any applicant for the renewal certification document who is denied a renewal by the Committee of Credentials may request a reevaluation of his application by the commission.

44248 UNAUTHORIZED RELEASE OF INFORMATION

(a) Any member of the commission, commission staff member, member or staff member of the Committee of Credentials, State Department of Education employee who releases or gives out information received at a commission or committee meeting or hearing or through the investigation of a certified employee without authorization of the commission or committee, is guilty of a misdemeanor.

(b) Any material witness or his or her representative who releases or gives out information received at a commission or committee meeting or hearing, or who releases or gives out information obtained as a result of direct involvement in the investigation of a certified employee, without authorization of the commission or committee, is guilty of a misdemeanor unless this information was known to the material witness or his or her representative prior to that meeting, hearing, or investigation.

CERTIFICATES AND CREDENTIALS

- 44320 Professional preparation programs; student teaching, collaborative effort with post secondary institutions.
- 44332 Temporary certificates
- 44332.5 Registration of certificates by certain districts; temporary certificate of clearance;
- 44332.6 Criminal record summary; applicants for temporary certificate or temporary certificate of clearance convicted of violent or serious felony; certificate of rehabilitation and pardon
- 44334 Oath or affirmation
- 44336 Health hazards
- 44337 Teachers with disabilities; training; hiring
- 44338 Teachers with disabilities; health and safety of others
- 44339 Identification and evidence of good moral character; disclosures not required; notice
- 44340 Identification cards

- 44341 Production of information; confidentiality; consent
- 44345 Denial of application
- 44346 Further grounds for denial; classes of applicants; rehabilitation
- 44346.1 Credentials, applicants convicted of violent or serious felony; certificate of rehabilitation and pardon
- 44354 Administration of oath
- 44355 Validity until revoked, suspended or expired; credentials void ab initio; grounds

44320 PROFESSIONAL PREPARATION PROGRAMS; STUDENT TEACHING; COLLABORATIVE EFFORT WITH POST SECONDARY INSTITUTIONS
(Subsections a-c omitted for brevity)

(d) Prior to admission to either student teaching under any professional preparation program approved by the commission, or participation in a field experience program as described in Section 44324, a candidate for a credential shall obtain a certificate of clearance from the commission which shall be issued when the commission has verified the candidate's personal identification and health status. The fee for the certificate of clearance shall not exceed one-half of the regular fee for a credential and shall be deducted from the fee for the initial credential applied for by the certificate holder.

CERTIFICATES AND CREDENTIALS

44332 TEMPORARY CERTIFICATES

(a) Except where that service is provided by a school district authorized to register certification documents pursuant to Section 44332.5, each county or city and county board of education may issue temporary certificates for the purpose of authorizing salary payments to certified employees whose credential applications are being processed or to personnel employed in children's centers or other preschool educational programs whose permit applications are being processed. However, the individual must have demonstrated proficiency in basic reading, writing, and mathematic skills pursuant to the requirements of Section 44252.5. The applicant for the temporary certificate shall make a statement under oath that he or she has duly filed an application for a credential or permit together with the required fee and that, to the best of his or her knowledge, no reason exists why a certificate or permit should not be issued. The certificate or permit shall be valid for not more than one calendar year from the date of issuance.

(b) The county or city and county board of education shall cancel the temporary certificate or permit immediately upon receipt of certification in writing from the commission that the applicant apparently does not possess adequate academic qualifications or apparently has a criminal record that would disqualify the applicant.

(c) A temporary certificate issued to a permit applicant is not valid beyond the time that the commission either issues or denies the originally requested permit. A temporary certificate issued to a credential applicant is not valid beyond the time that the commission provides written notification to the county or city and county board of education that the applicant apparently does not possess adequate qualifications, that the commission has received facts that may cause denial of the application, or issues or denies the originally requested credential.

(d) A county or city and county board of education may not issue a temporary certificate to an applicant whose teaching credential is revoked or suspended.

44332.5 REGISTRATION OF CERTIFICATES BY CERTAIN DISTRICTS; TEMPORARY CERTIFICATE OF CLEARANCE

(a) A school district which may issue warrants pursuant to Section 42647 may, at its discretion, provide for the registration of any valid certification or other document authorizing the holder thereof to serve in a position requiring certification qualifications as an employee of the school district.

(b) During any period when summary criminal history information is not available from the Federal Bureau of Investigation, no applicant for an initial credential, certificate, or permit shall be employed in a position requiring certification qualifications until he or she has met the minimum requirements for a temporary certificate of clearance. A temporary certificate of clearance or a credential, certificate, or permit authorizing service in the public schools shall be issued when the applicant has:

(1) Made full disclosure of all facts necessary to establish his or her true identity.

(2) Made a statement under penalty of perjury that he or she has not been convicted of a crime which would constitute grounds for the denial of the credential, permit, or certificate applied for.

An applicant shall not be required to disclose, and the Committee of Credentials shall not inquire into or consider, any acts or omissions not related to the applicant's fitness to teach or to perform other duties for which he or she is certificated, or which is related to his or her competence to perform the duties authorized by his or her credential.

(3) Paid to the Commission on Teacher Credentialing the amount of twelve dollars (\$12) or the fees or costs which have been or will be assessed by the Federal Bureau of Investigation for the issuance of its summary criminal history of the applicant when this information is once again made available to the commission. The fees authorized by this paragraph shall be applicable to all credentials, permits, and certificates which were applied for or issued after October 1, 1981.

(c) Upon receipt of a statement from the Federal Bureau of Investigation that it has no summary criminal history information on the applicant, or upon receipt of the summary criminal history information and clearance by the Committee of Credentials, a temporary certificate of clearance shall be converted to a regular certificate of clearance.

44332.6 CRIMINAL RECORD SUMMARY; APPLICANTS FOR TEMPORARY CERTIFICATE OR TEMPORARY CERTIFICATE OF CLEARANCE CONVICTED OF VIOLENT OR SERIOUS FELONY; CERTIFICATE OF REHABILITATION AND PARDON

(a)(1) Before issuing a temporary certificate pursuant to Section 44332, a county or city and county board of education shall obtain a criminal record summary about the applicant from the Department of Justice and shall not issue a temporary certificate if the applicant has been convicted of a violent or serious felony.

(2) Before issuing a temporary certificate of clearance pursuant to Section 44332.5, a school district shall obtain a criminal record summary about the applicant from the Department of Justice and shall not issue a temporary certificate of clearance if the applicant has been convicted of a violent or serious felony.

(b) This section applies to any violent or serious offense which, if committed in this state would have been punishable as a violent or serious felony.

(c) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(d) Notwithstanding subdivision (a), a person shall not be denied a temporary certificate or a temporary certificate of clearance solely on the basis that he or she has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(e) Notwithstanding subdivision (a), a person shall not be denied a temporary certificate or a temporary certificate of clearance solely on the basis that the person has been convicted of a serious felony that is not also a violent felony, if that person can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one year. If the offense in question occurred outside this state, then the person may seek a finding of rehabilitation from the court in the school district in which he or she is a resident.

(f)(1) Notwithstanding paragraph (1) of subdivision (a), a county or city and county board of education may issue a temporary certificate to an employee currently and continuously employed by a school district within the county who is serving under a valid credential and has applied for a renewal of that credential or for an additional credential without obtaining a criminal record summary for that employee.

(2) Notwithstanding paragraph (2) of subdivision (a), a county or city and county board of education may issue a temporary certificate of clearance to an employee currently and continuously employed by a school district within the county who is serving under a valid credential and has applied for a renewal of that credential or for an additional credential without obtaining a criminal record summary for that employee.

44334 OATH OR AFFIRMATION

Except as provided in this code, no certification document shall be granted to any person unless and until he has subscribed to the following oath or affirmation: "I solemnly swear (or affirm) that I will support the Constitution of the United States of America, the Constitution of the State of California, and the laws of the United States and the State of California." The oath or affirmation shall be subscribed and certified or declared, pursuant to Section 2015.5 of the Code of Civil Procedure, and shall be filed with the commission. Any certificated person who is a citizen or subject of any country other than the United States, and who is employed in any capacity in any of the public schools of the state shall, before entering upon the discharge of his duties, subscribe to an oath to support the institutions and policies of the United States during the period of his sojourn within the state. Upon the violation of any of the terms of the oath or affirmation, the commission shall suspend or revoke the credential which has been issued.

44336 HEALTH HAZARDS

When required by the commission, the application for a certification document or the renewal thereof shall be accompanied by a certificate in such form as shall be prescribed by the commission, from a physician and surgeon licensed under the provisions of the Business and Professions Code showing that the applicant is free from any contagious and communicable disease or other disabling disease or defect unfitting the applicant to instruct or associate with children.

44337 TEACHERS WITH DISABILITIES; TRAINING; HIRING

No person otherwise qualified shall be denied the right to receive credentials from the commission, to receive training for the purpose of becoming a teacher, or to engage in practice teaching in any school, on the grounds he or she is an individual with a disability, nor shall any school district refuse to engage a teacher on such grounds, provided, that the teacher, with reasonable accommodations, is able to carry out the duties of the position for which he or she applies to the school district. "Disability," as used in this section, means (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual, (2) a record of such an impairment, or (3) being regarded as having such an impairment.

44338 TEACHERS WITH DISABILITIES; HEALTH AND SAFETY OF OTHERS

No person otherwise qualified shall be denied the right to receive credentials issued by the commission, to receive training for the purpose of becoming a teacher, or to engage in practice teaching in any school, on the ground he or she is a person with a disability; provided, that the person does not pose a direct threat of substantial harm to the health or safety of other individuals.

44339 IDENTIFICATION AND EVIDENCE OF GOOD MORAL CHARACTER; DISCLOSURES NOT REQUIRED; NOTICE

(a) The commission shall adopt, in addition to any other regulations authorized by law, regulations requiring every applicant for a credential, or for the renewal of a credential, to submit reasonable evidence of identification and good moral character.

(b) The adopted rules and regulations shall specify that an applicant shall not be required to disclose, and the Committee of Credentials shall not inquire into or consider, any acts or omissions not related to the applicant's fitness to teach or perform other duties for which he or she is certificated, or which is related to his or her competence to perform the duties authorized by his or her credential.

(c) The adopted rules and regulations shall also prescribe the notice which shall be supplied to each applicant on the application form, which shall include the following information:

(1) The offenses which constitute grounds for the mandatory denial or revocation of a credential.

(2) The offenses for which the commission is authorized to deny or revoke a credential, depending upon the degree of rehabilitation or requalification demonstrated by the applicant.

(3) The standards under which the commission determines that it shall not investigate or pursue offenses which are not clearly related to an applicant's fitness or competence to teach or perform other certificated services.

44340 IDENTIFICATION CARDS

Each applicant for a credential, or for the renewal of a credential, shall submit with his application duplicate personal identification cards provided by the commission upon which shall appear the legible fingerprints and a personal description of the applicant.

The commission is authorized to, and shall adopt such regulations as may in its judgment be necessary for the administration of this section.

44341 PRODUCTION OF INFORMATION; CONFIDENTIALITY; CONSENT

(a) For the sole purpose of ascertaining the moral character and true identity of the holder of a credential or an applicant for a credential or the renewal of a credential, the commission is authorized to require the production of information, records, reports, and other data from any public agency, except where that production is prohibited by law, pursuant to authority identified by the public agency.

This information shall be provided to the commission within 30 days of the request.

The commission shall maintain the confidentiality of such information in accordance with Chapter 1 (commencing with Section 1798) of Title 1.8 of the Civil Code.

(b) Except for the situation prescribed in subdivision (d), every applicant for a credential or for the renewal of a credential shall be deemed to have given his or her consent for the securing of, and disclosure of, information to the commission for the sole purpose of ascertaining the moral character and true identity of the holder of a credential, the applicant for a credential, or the applicant for the renewal of the credential.

(c) The Department of Justice shall furnish, upon application of the commission or its authorized representative, all information pertaining to any applicant of whom there is a record in its office except that information which may compromise or prejudice an ongoing criminal investigative matter may be withheld until such matter is completed.

(d) With the written consent of an applicant for a credential or a credential holder, the commission upon written request of any private school authority, shall release to that private school authority information and other data relative to the identification or fitness of any applicant for a teaching position in the private school so long as not otherwise prohibited by any other provision of law.

(e) Each application for a credential shall contain notice that the information provided by the applicant is subject to investigation for, and verification of, the applicant's moral character and true identity by means of review of information, records, reports, and other data from any agency or department of the state or any political subdivision of the state, whether chartered by the state or not, secured by the commission for such purposes.

44345 DENIAL OF APPLICATION

The commission may deny any application for the issuance of a credential or for the renewal of a credential made by any applicant who falls under any of the following categories:

(a) Lacks the qualifications which are prescribed by law or regulations adopted by the commission pursuant thereto.

(b) Is physically or mentally so disabled as to be rendered unfit to perform the duties authorized by the credential for which he or she applies. However, the mere fact that an applicant has sought or received psychiatric treatment shall not be considered as preliminary evidence of mental disability and shall not provoke special scrutiny of such applicant's qualifications for a credential.

(c) Is addicted to the use of intoxicating beverages to excess.

(d) Is addicted to the use of controlled substances.

(e) Has committed any act involving moral turpitude.

(f) Has had a certification document revoked.

(g) Has intentionally practiced or attempted to practice any material deception or fraud in his or her application.

(h) Fails or refuses to furnish reasonable evidence of identification or good moral character.

(i) Has been convicted of any offense defined in subdivision 1 of Section 314 of the Penal Code prior to September 7, 1955.

Any denial pursuant to subdivisions (a) to (e), inclusive, shall be based upon reasons related to the applicant's fitness to teach or fitness to perform other duties for which that applicant is certificated, or competence to perform the duties which the credential would authorize the applicant to perform.

44346 FURTHER GROUNDS FOR DENIAL; CLASSES OF APPLICANTS; REHABILITATION

(a) The commission shall deny any application for the issuance of a credential or for the renewal of a credential made by any applicant who comes within any of the following classes:

(1) Has been determined to be a sexual psychopath under the provisions of Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or under similar provisions of law of any other state.

(2) Has been convicted of any sex offense, as defined in Section 44010.

(3) Has been convicted of a controlled substance offense, as defined in Section 44011.

(4) Has been found to be insane through a criminal proceeding by a federal court or a court in this or any other state.

(b) Notwithstanding paragraphs (2) and (3) of subdivision (a), no person shall be denied a credential solely on the basis that he or she has been convicted of a crime specified in paragraphs (2) and (3) of subdivision (a) if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code, and if his or her probation has been terminated and the information or accusation has been dismissed pursuant to Section 1203.4 of the Penal Code.

(c) Notwithstanding paragraph (3) of subdivision (a) or subdivision (b), the commission may issue a credential to a person convicted of a controlled substance offense as defined in Section 44011 if the commission determines from the evidence presented that the person has been rehabilitated for at least five years, or has received a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 or Part 3 of the Penal Code, or if the accusation or information against the person has been dismissed and he or she has been released from all disabilities and penalties resulting from the offense pursuant to Section 1203.4 of the Penal Code.

(d) Notwithstanding paragraph (4) of subdivision (a), the commission may issue a credential to a person found to be insane through a criminal

proceeding by a federal court or a court in this or any other state if the commission determines from the evidence presented that the person has been rehabilitated for at least five years.

44346.1 CREDENTIALS; APPLICANTS CONVICTED OF VIOLENT OR SERIOUS FELONY; CERTIFICATE OF REHABILITATION AND PARDON

(a) The commission shall deny an application for the issuance of a credential made by an applicant who has been convicted of a violent or serious felony or a crime set forth in subdivision (a) of Section 44424 or whose employment has been denied or terminated pursuant to Section 44830.1.

(b) This section applies to any violent or serious offense which, if committed in this state, would have been punishable as a violent or serious felony.

(c) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(d) Notwithstanding subdivision (a), a person shall not be denied a credential solely on the basis that the applicant or holder has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

44354 ADMINISTRATION OF OATH

Any oath required of an applicant for a credential may be administered by any of the persons enumerated in Section 60, by such employees of the Department of Education as the Superintendent of Public Instruction may designate, and by such employee of the commission as the commission may designate.

44355 VALIDITY UNTIL REVOKED, SUSPENDED OR EXPIRED; CREDENTIALS VOID AB INITIO; GROUNDS

(a) Except as provided in subdivision (b), all credentials regularly issued are valid until revoked, suspended, or expired as provided by law.

(b) A credential issued under either of the following circumstances is void and shall be deemed to be void from the date it was issued:

(1) A credential which would not have been issued but for a material deception or fraud committed by an applicant or by another in the applicant's behalf; or

(2) A credential which the commission had no lawful authority to issue and which would not have been issued but for some material mistake of law or fact by either or both the applicant and the commission.

(c) A notice that a credential is void pursuant to paragraph (1) or (2) of subdivision (b) shall be served upon the credential holder at his or her last known address as provided in Section 1013 of the Code of Civil Procedure. Within 30 days thereafter, such notice may be appealed to the commission only on the grounds that there was no fraud, material deception, or error and that

the commission had the lawful authority to issue the credential on the facts stated in the application.

PENALTIES FOR THE SUBMISSION OF FRAUDULENT DOCUMENTS

- 44360** **Prohibited acts; violation**
- 44361** **Filing license, credential, or
certificate issued to another
person; misdemeanor;
punishment**
- 44362** **Verification of facts necessary
to establish qualifications;
oath**

44360 PROHIBITED ACTS; VIOLATION

Any person is guilty of a misdemeanor who, individually or in a representative or any other capacity, does any of the following:

(a) Alters with fraudulent intent, or uses or attempts to use any altered diploma, certificate, transcript, affidavit, or any other evidence to be used in obtaining a credential or certificate authorizing service in the public schools.

(b) Assumes any degree or title not conferred upon him or her in the manner and by the authority recognized in this chapter with intent to represent falsely that he or she has received that degree or title, or who willfully makes any false statement on any application for examination, license, credential, or certificate under this chapter.

(c) Sells, barter, or offers to sell or barter, or purchase or procure directly or indirectly with the intent that it be fraudulently used, any license, credential, or permit authorizing service in the public schools, or any diploma, certificate, affidavit, transcript, or any other evidence required for use in connection with any application for, or the granting of any license, credential, or certificate authorizing service in, the public schools.

(d) Performs or attempts to perform any teaching or other certified service in any public school under a false or assumed name, or under any name other than that inscribed by the commission on any license, credential, or certificate authorizing him or her to perform those services. This provision shall not apply to persons who, because of marriage or other good faith reasons, have given notice of a name change.

(e) Refuses or willfully fails to surrender upon demand of the commission, his or her license, credential, or certificate authorizing teaching or service in the public schools upon revocation, suspension, or voiding of those documents under this chapter.

44361 FILING LICENSE, CREDENTIAL, OR CERTIFICATE ISSUED TO ANOTHER PERSON; MISDEMEANOR; PUNISHMENT

Every person filing for record or attempting to file for record the license, credential, or certificate issued to another person, falsely claiming himself or

herself to be the person named in or entitled to the license, credential, or certificate, is guilty of a misdemeanor and, upon conviction thereof, shall be subject to imprisonment in the county jail for not more than one year.

44362 VERIFICATION OF FACTS NECESSARY TO ESTABLISH QUALIFICATIONS; OATH

Every fact necessary to establish the qualifications of an applicant for the issuance of any license, credential, or certificate authorizing the performance of services in the public schools shall be verified under penalty of perjury. An oath to this effect shall be displayed prominently on each application form, and shall be dated and subscribed by the applicant.

REVOCATION AND SUSPENSION OF CERTIFICATION DOCUMENTS

44420	Failure to fulfill contract as ground for suspension of diplomas and certificates
44421	General grounds for private admonishment, public reproof, credential revocation or credential suspension by commission
44421.1	Recruit of pupils as customers for certificated person's business; private admonishment or credential suspension or revocation
44421.5	False fiscal expenditure data reports; sanctions
44422	Immoral or unprofessional conduct, unfitness, disobedience; hearing by county board of education; report and recommendation; private admonishment, suspension or revocation by commission
44423	Request for revocation as reason for revocation by commission
44424	Conviction of crime; plea of nolo contendere; denial or termination of employment
44425	Conviction of sex or narcotic offense as grounds for revocation by commission; plea of nolo contendere to sex offense
44425.5	Criminal insanity; final revocation for felony sex or controlled substance offenses or murder
44426	Determination as sexual psychopath as grounds for revocation by commission

44427	Immoral or unprofessional conduct, unfitness, disobedience as grounds for revocation or suspension by county board of education
44433	Unauthorized departure from service as unprofessional conduct and ground for suspension by county board
44434	Immoral and unprofessional conduct, profanity, intemperance, unfitness as grounds for recommendation for revocation
44435	Conviction of certain felonies as grounds for revocation by county board of education
44436	Conviction of sex offense or controlled substance offense as grounds for revocation and suspension by county board
44437	Determination as sexual psychopath as ground for revocation and suspension by county board
44438	Private admonition, expungement of records
44439	Subversion of licensing examination or administration of examination
44440	Withdrawal of application for credential, permit or other certification without consent of commission; authority of commission to proceed

44420 FAILURE TO FULFILL CONTRACT AS GROUND FOR SUSPENSION OF DIPLOMAS AND CERTIFICATES

Should any person employed by a school district in a position requiring certification qualifications refuse, without good cause, to fulfill a valid contract of employment with such district or leave the service of such district without the consent of the superintendent, if any, or the governing board, of such district except in the manner provided for by law, the Commission for Teacher Preparation and Licensing shall, after proof of such fact is made to it, suspend the credentials theretofore issued to him by the commission for not more than one year.

If the credentials issued to the person by the board or the commission have once been suspended pursuant to this section, the commission may, if such credentials again become subject to suspension under this section, suspend such credentials for not more than two years.

44421 GENERAL GROUNDS FOR PRIVATE ADMONISHMENT, PUBLIC REPROVAL, CREDENTIAL REVOCATION OR CREDENTIAL SUSPENSION BY COMMISSION

The Commission for Teacher Preparation and Licensing shall privately admonish, publicly reprove, revoke or suspend for immoral or unprofessional conduct, or for persistent defiance of, and refusal to obey, the laws regulating the duties of persons serving in the public school system, or for any cause which would have warranted the denial of an application for a credential or the renewal thereof, or for evident unfitness for service.

44421.1 RECRUIT OF PUPILS AS CUSTOMERS FOR CERTIFICATED PERSON'S BUSINESS; PRIVATE ADMONISHMENT OR CREDENTIAL SUSPENSION OR REVOCATION

Notwithstanding Section 44421, the Commission on Teacher Credentialing shall privately admonish, or suspend or revoke the credential of, any certificated person who knowingly and willfully uses school records of pupil data in connection with, or implicitly or explicitly attempts to recruit a pupil to be a customer for, any business owned by the certificated person or in which the certificated person is an employee.

44421.5 FALSE FISCAL EXPENDITURE DATA REPORTS; SANCTIONS

Notwithstanding Section 44421, the Commission on Teacher Credentialing shall privately admonish, or suspend or revoke the credential of, any certificated person who knowingly and willfully reports false fiscal expenditure data relative to the conduct of any educational program.

44422 IMMORAL OR UNPROFESSIONAL CONDUCT, UNFITNESS, DISOBEDIENCE; HEARING BY COUNTY BOARD OF EDUCATION; REPORT AND RECOMMENDATION; PRIVATE ADMONISHMENT, SUSPENSION OR REVOCATION BY COMMISSION

Whenever the holder of any credential issued by the State Board of Education or the Commission for Teacher Preparation and Licensing is charged with immoral or unprofessional conduct or evident unfitness for service or persistent defiance of, and refusal to obey, the laws regulating the duties of his position, the commission in its discretion after notifying the person charged of its intention to do so, may require the county board of education of the county in which he is serving or has last served to give notice of, and conduct, a hearing of the charges in the manner prescribed by law for the hearing of charges for private admonition, or for the revocation or suspension of a certificate by a county board of education.

The county board of education, after the hearing, shall report to the commission its findings, and a summary of the evidence, and shall make a definite recommendation concerning the revocation or suspension of the credential.

Upon receipt of a copy of the findings, summary of evidence, and recommendation, the commission may privately admonish the holder of the credential, or suspend or revoke the credential for the causes stated or order the charges dismissed.

44423 REQUEST FOR REVOCATION AS REASON FOR REVOCATION BY COMMISSION

Whenever the holder of any credential issued by the State Board of Education or the Commission on Teacher Credentialing requests in writing that the credential held by him be revoked, the commission shall revoke such credential.

44424 CONVICTION OF CRIME; PLEA OF NOLO CONTENDERE; DENIAL OR TERMINATION OF EMPLOYMENT

(a) Upon the conviction of the holder of any credential issued by the State Board of Education or the Commission on Teacher Credentialing of a violation, or attempted violation, of a violent or serious felony as described in Section 44346.1, or of any one or more of Penal Code Sections 187 to 191, 192 insofar as said section relates to voluntary manslaughter, 193, 194 to 217.1, both inclusive, 220, 222, 244, 245, 261 to 267, both inclusive, 273a, 273ab, 273d, 273f, 273g, 278, 285 to 288a, both inclusive, 424, 425, 484 to 488, both inclusive, insofar as said sections relate to felony convictions, 503 and 504, or of any offense involving lewd and lascivious conduct under Section 272 of the Penal Code, or any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punished as one or more of the offenses specified in this section, becoming final, the commission shall forthwith revoke the credential.¹

(b) Upon a plea of nolo contendere as a misdemeanor to one or more of the crimes set forth in subdivision (a), all credentials held by the respondent shall be suspended until a final disposition regarding those credentials is made by the commission. Any action that the commission is permitted to take following a conviction may be taken after the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(c) The commission shall revoke a credential issued to a person whose employment has been denied or terminated pursuant to Section 44830.1.

(d) Notwithstanding subdivision (a), a credential shall not be revoked solely on the basis that the applicant or holder has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with section 4852.01) of Title 6 of Part 3 of the Penal Code.

44425 CONVICTION OF SEX OR NARCOTIC OFFENSE AS GROUNDS FOR REVOCATION BY COMMISSION; PLEA OF NOLO CONTENDERE TO SEX OFFENSE

Whenever the holder of any credential issued by the State Board of Education or the Commission on Teacher Credentialing has been convicted of any sex

¹ See Appendix for Specific Offenses Referenced in 44424

offense as defined in Section 44010 or controlled substance offense as defined in Section 44011, the commission shall forthwith suspend the credential.² If the conviction is reversed and the holder is acquitted of the offense in a new trial or the charges against him or her are dismissed, the commission shall forthwith terminate the suspension of the credential. When the conviction becomes final or when imposition of sentence is suspended, the commission shall forthwith revoke the credential.² Notwithstanding any other law, revocation shall be final without possibility of reinstatement of the credential if the conviction is for a felony sex offense, as defined in Section 44010, or a felony controlled substance offense, as defined in Section 44011, in which an element of the controlled substance offense is either the distribution to, or use of a controlled substance by, a minor.

Upon a plea of nolo to any sex offense specified in Section 44010, which plea does not constitute a conviction pursuant to Section 1016 of the Penal Code, all credentials held by the respondent shall be suspended until a final disposition regarding those credentials is made by the commission. Any action that the commission is permitted to take following a conviction may be taken after the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

44425.5 CRIMINAL INSANITY; FINAL REVOCATION FOR FELONY SEX OR CONTROLLED SUBSTANCE OFFENSES OR MURDER

Whenever the holder of any credential issued by the State Board of Education or the Commission on Teacher Credentialing is found to be insane, by a federal court or a court in this or any other state, the commission shall immediately revoke all credentials held by the person.

Notwithstanding any other provision of law, revocation shall be final without possibility of reinstatement of the credentials if the holder of the credential is charged with a felony sex offense, as defined in Section 44010, a felony controlled substance offense, as defined in Section 44011, in which an element of the controlled substance offense is either the distribution to, or use of a controlled substance by, a minor, or murder, as defined in Section 187 of the Penal Code, and, in response to the charge, the holder of the credential is found to be insane through a criminal proceeding by a federal court or a court in this or any other state.

44426 DETERMINATION AS SEXUAL PSYCHOPATH AS GROUNDS FOR REVOCATION BY COMMISSION

Whenever the holder of any credential issued by the State Board of Education or the Commission for Teacher Preparation and Licensing has been determined to be a sexual psychopath under the provisions of Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or under similar provisions of law of any other state, the commission shall forthwith suspend the credential. If the

² See Appendix for Specific Offenses Referenced in 44010, 44011

determination is reversed and the holder is determined not be a sexual psychopath in a new proceeding or the proceeding to determine whether he is a sexual psychopath is dismissed, the commission shall forthwith terminate the suspension of the credential. When the determination becomes final, the commission shall forthwith revoke the credential.

44427 IMMORAL OR UNPROFESSIONAL CONDUCT, UNFITNESS, DISOBEDIENCE AS GROUNDS FOR REVOCATION OR SUSPENSION BY COUNTY BOARD OF EDUCATION

County boards of education may revoke or suspend, for immoral or unprofessional conduct evident unfitness for teaching, or persistent defiance of, and refusal to obey the laws regulating the duties of, teachers, the certificates granted by them.

44433 UNAUTHORIZED DEPARTURE FROM SERVICE AS UNPROFESSIONAL CONDUCT AND GROUND FOR SUSPENSION BY COUNTY BOARD

If any teacher employed by a board of school trustees for a specified time, leaves the school before the expiration of the time, without the consent of the trustees, in writing, the teacher is guilty of unprofessional conduct, and the board of education of the county, upon receiving notice of the fact, may suspend the certificate of the teacher for the period of one year.

44434 IMMORAL AND UNPROFESSIONAL CONDUCT, PROFANITY, INTEMPERANCE, UNFITNESS AS GROUNDS FOR RECOMMENDATION FOR REVOCATION

Each city or city and county board of examination may for immoral and unprofessional conduct, profanity, intemperance, or evident unfitness for teaching, recommend to the city or city and county board of education, the revocation of any certificate previously granted by the board of education in the city or city and county.

44435 CONVICTION OF CERTAIN FELONIES AS GROUNDS FOR REVOCATION BY COUNTY BOARD OF EDUCATION

Upon the becoming final of the conviction of the holder of a certificate issued by a county board of education of a violation or attempted violation of any one or more of Penal Code sections 187 to 191, 192 insofar as said section relates to voluntary manslaughter, 193, 194, to 232, inclusive, 244, 245, 261 to 267, inclusive, 273a, 273f, 273g, 278, 285 to 288a, both inclusive, 424, 425, 484 to 488, both inclusive, insofar as said sections relate to grand theft, 503 and 504, or of Penal Code Section 272, the county board of education shall forthwith revoke the certificate.

44436 CONVICTION OF SEX OFFENSE OR CONTROLLED SUBSTANCE OFFENSE AS GROUNDS FOR REVOCATION AND SUSPENSION BY COUNTY BOARD

Whenever the holder of a certificate issued by a county board of education has been convicted of any sex offense as defined in Section 44010 or controlled substance offense as defined in Section 44011, the county board of education

shall forthwith suspend the certificate. If the conviction is reversed and the holder is acquitted of the offense in a new trial or the charges against him or her are dismissed, the board shall forthwith terminate the suspension of the certificate. When the conviction becomes final or when imposition of sentence is suspended, the board shall forthwith revoke the certificate.

44437 DETERMINATION AS SEXUAL PSYCHOPATH AS GROUND FOR REVOCATION AND SUSPENSION BY COUNTY BOARD

Whenever the holder of a certificate issued by a county board of education has been determined to be a sexual psychopath under the provisions of Article 1 (commencing with Section 6300), Chapter 2, Part 2, Division 6 of the Welfare and Institutions Code or under similar provisions of law of any other state, the county board of education shall forthwith suspend the certificate. If the determination is reversed and the holder is determined not to be a sexual psychopath in a new proceeding or the proceeding to determine whether he is a sexual psychopath is dismissed, the board shall forthwith terminate the suspension of the certificate. When the determination becomes final, the board shall forthwith revoke the certificate.

44438 PRIVATE ADMONITION; EXPUNGEMENT OF RECORDS

(a) "Private admonition," as used in this article and in Article 3 (commencing with Section 44240) of Chapter 2, is a warning, in writing, to the applicant or credential holder that states in ordinary and concise language the act or omission of the applicant or credential holder and further states that repetition of such act or omission may result in denial, suspension, or revocation of the credential.

(b) The private admonition shall be included in the applicant's or credential holder's file, maintained by the commission.

(c) The applicant's or credential holder's employer at the time of admonition shall receive a copy of the admonition and shall not make such copy accessible or disclose the contents thereof, unless the applicant or credential holder consents, in writing, thereto.

(d) For purposes of Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the private admonition is deemed a personnel record within the meaning of subdivision (c) of Section 6254 of the Government Code.

(e) The commission and the applicant's or credential holder's employer shall expunge all records pertaining to the private admonition maintained in his or her files pursuant to subdivisions (b) and (c) at the expiration of three years, so long as there is no recurrence of such an offense.

44439 SUBVERSION OF LICENSING EXAMINATION OR ADMINISTRATION OF EXAMINATION

The commission may deny, suspend, revoke or otherwise restrict a license on the ground that an applicant or licensee has subverted or attempted to subvert any licensing examination or the administration of an examination, including, but not limited to:

(a) Conduct which violates the security of the examination materials; removing from the examination room any examination materials; the unauthorized xerographic, photographic, or other mechanical reproduction of any portion of the actual licensing examination; aiding by any means the unauthorized xerographic, photographic, or other mechanical reproduction of any portion of the actual licensing examination; paying or using professional or paid examination-takers for the purpose of reconstructing any portion of the licensing examination; obtaining examination questions or other examination material, except by specific authorization either before, during, or after an examination or use or purport to use any examination questions or materials which were improperly removed or taken from any examination for the purpose of instructing or preparing applicants for examinations; or selling, distributing, buying, receiving or having unauthorized possession of any portion of a future, current, or previously administered licensing examination.

(b) Conduct that violates the standard of examination administration; communicating with any other examinee during the administration of a licensing examination; copying answers from another examinee or permitting one's answers to be copied by another examinee; having in one's possession during the administration of the licensing examination any books, equipment, notes, written or printed materials, or data of any kind, other than the examination materials distributed, or otherwise authorized to be in one's possession during the examination; or impersonating any examinee or having an impersonator take the licensing examination on one's behalf.

44440 WITHDRAWAL OF APPLICATION FOR CREDENTIAL, PERMIT OR OTHER CERTIFICATION WITHOUT CONSENT OF COMMISSION; AUTHORITY OF COMMISSION TO PROCEED

(a) No applicant who is under review by the Commission on Teacher Credentialing shall be allowed to withdraw his or her application for a credential, permit, or other certification document without the written consent of the commission. The commission shall retain its authority over those applicants to proceed with the denial of the credential, permit, or other certification document upon any ground provided by law, or to enter an order denying the credential, permit, or other certification document upon any ground provided by law.

(b) The suspension or expiration of any credential, permit, or certification document, or its surrender without the written consent of the commission, shall not deprive the commission of its authority to do any of the following:

(1) Institute or continue a disciplinary proceeding against the holder of a credential, permit, or other certification document upon any ground provided by law.

(2) Enter an order suspending or revoking the credential, permit, or other certification document.

(3) Issue a private admonition to the holder of a credential, permit, or other certification document.

RESIGNATIONS, DISMISSALS, AND TERMINATIONS OF EMPLOYEES

44830.1	Felons; certificated positions; criminal record summary; fingerprints; confidentiality
44830.2	Employment in multiple districts; fingerprints, criminal history record, etc.
44836	Employment of persons convicted of sex offenses or controlled substance offenses
44932	Grounds for dismissal of permanent employees; suspension of employees
44933	Other grounds for dismissal or suspension; additional application of section
44940	Leave of absence; certificated employee charged with mandatory or optional leave of absence offense; suspension of credentials; definitions
44940.5	Compulsory leave of absence; procedures; extension of leave; compensation; bond or security; reports
44942	Suspension or transfer of certificated employee on ground of mental illness; examination; mandatory sick leave
44947	Requirements upon governing board on dismissal for certain crimes
51550	Sex education courses

44830.1 FELONS; CERTIFICATED POSITIONS; CRIMINAL RECORD SUMMARY; FINGERPRINTS; CONFIDENTIALITY

(a) In addition to any other prohibition or provision, no person who has been convicted of a violent or serious felony shall be hired by a school district in a position requiring certification qualifications or supervising positions requiring certification qualifications. A school district shall not retain in employment a current certificated employee who has been convicted of a violent or serious felony, and who is a temporary employee, a substitute employee, or a probationary employee serving before March 15 of the employee's second probationary year. If any conviction is reversed and the formerly convicted person is acquitted of the offense in a new trial, or the charges are dismissed, this section does not prohibit his or her employment thereafter.

(b) This section applies to any violent or serious offense which, if committed in this state, would have been punishable as a violent or serious felony.

(c)(1) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(2) For purposes of this section, a plea of nolo contendere to a serious or violent felony constitutes a conviction.

(3) For purposes of this section, the term "school district" has the same meaning as defined in Section 41302.5.

(d) When the governing board of any school district requests a criminal record summary of a temporary, substitute, or probationary certificated employee, two fingerprint cards, bearing the legible rolled and flat impressions of the person's fingerprints together with a personal description and the fee, shall be submitted, by any means authorized by the Department of Justice, to the Department of Justice.

(e) When the Department of Justice ascertains that an individual who is an applicant for employment by a school district has been convicted of a violent or serious felony, or for purposes of implementing the prohibitions set forth in Section 44836, any sex offense, as defined in Section 44010, or any controlled substance offense, as defined in Section 44011, the department shall notify the school district of the criminal information pertaining to the applicant. The notification shall be delivered by telephone or electronic mail to the school district. The notification to the school district shall cease to be made once the statewide electronic fingerprinting network is returning responses within three working days. The Department of Justice shall send by first-class mail or electronic mail a copy of the criminal information to the Commission on Teacher Credentialing. The Department of Justice may charge a reasonable fee to cover the costs associated with processing, reviewing, and supplying the criminal record summary required by this section. In no event shall the fee exceed the actual costs incurred by the department.

(f) Notwithstanding subdivision (a), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 34.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(g) Notwithstanding subdivision (f), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a serious felony that is not also a violent felony if that person can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one year. If the offense in question occurred outside this state, then the person may seek a finding of rehabilitation from the court in the school district in which he or she is a resident.

(h) Notwithstanding any other provision of law, when the Department of Justice notifies a school district by telephone or electronic mail that a current temporary employee, substitute employee, or probationary employee serving before March 15 of the employee's second probationary year, has been convicted of a violent or serious felony, that employee shall immediately be placed on leave without pay. When the school district receives written

electronic notification of the fact of conviction from the Department of Justice, the employee shall be terminated automatically and without regard to any other procedure for termination specified in this code or school district procedures unless the employee challenges the record of the Department of Justice and the Department of Justice withdraws in writing its notification to the school district. Upon receipt of written withdrawal of notification from the Department of Justice, the employee shall immediately be reinstated with full restoration of salary and benefits for the period of time from the suspension without pay to the reinstatement.

(i) An employer shall request subsequent arrest service from the Department of Justice as provided under Section 11105.2 of the Penal Code.

(j) Notwithstanding Section 47610, this section applies to a charter school.

(k) This section shall not apply to a certificated employee who applies to renew his or her credential when both of the following conditions have been met:

(1) The employee's original application for credential was accompanied by that person's fingerprints.

(2) The employee has either been continuously employed in one or more public school districts since the issuance or last renewal of his or her credential or his or her credential has not expired between renewals.

(l) Nothing in this section shall prohibit a county superintendent of schools from issuing a temporary certificate to any person described in paragraph (1) or (2) of subdivision (k).

(m) This section shall not prohibit a school district from hiring a certificated employee who became a permanent employee of another school district as of October 1, 1997.

(n) All information obtained from the Department of Justice is confidential. Every agency handling Department of Justice information shall ensure the following:

(1) No recipient may disclose its contents or provide copies of information.

(2) Information received shall be stored in a locked file separate from other files, and shall only be accessible to the custodian of records.

(3) Information received shall be destroyed upon the hiring determination in accordance with subdivision (a) of Section 708 of Title 11 of the California Code of Regulations.

(4) Compliance with destruction, storage, dissemination, auditing, backgrounding, and training requirements as set forth in Sections 700 through 708 inclusive, of Title 11 of the California Code of Regulations and Section 11077 of the Penal Code governing the use and security of criminal offender record information is the responsibility of the entity receiving the information from the Department of Justice.

44830.2 EMPLOYMENT IN MULTIPLE DISTRICTS; FINGERPRINTS, CRIMINAL HISTORY RECORDS, ETC.

(a) For situations in which a person is an applicant for employment, or is employed on a part-time or substitute basis, in a position requiring certification qualifications in multiple school districts within a county or within contiguous counties, the districts may agree among themselves to designate a single district, or a county superintendent may agree to act on behalf of participating districts within the county or contiguous counties, for the purposes of performing the following functions:

(1) Sending fingerprints to the Department of Justice.

(2) Receiving reports of convictions of serious and violent felonies.

(3) Reviewing criminal history records and reports of subsequent arrests from the Department of Justice.

(4) Maintaining common lists of persons eligible for employment.

(b) The school district or county superintendent serving in the capacity authorized in subdivision (a) shall be considered the employer for purposes of subdivisions (a), (d), and (g) of Section 44830.1.

(c) Upon receipt from the Department of Justice of a report of conviction of a serious or violent felony, the designated school district or county superintendent shall communicate that fact to the participating districts and remove the affected employee from the common list of persons eligible for employment.

(d) Upon receipt from the Department of Justice of a criminal history record or report of subsequent arrest for any person on a common list of persons eligible for employment, the designated school district or county superintendent shall give notice to the superintendent of any participating district or a person designated in writing by that superintendent, that the report is available for inspection on a confidential basis by the superintendent or authorized designee, at the office of the designated school district or county superintendent, for a period of 30 days following receipt of notice, to enable the employing school district to determine whether the employee meets that district's criteria for continued employment. The designated school district or county superintendent shall not release a copy of that information to any participating district or any other person, shall retain or dispose of the information in the manner required by law after all participating districts have had an opportunity to inspect it in accordance with this section, and shall maintain a record of all persons to whom the information has been shown that shall be available to the Department of Justice to monitor compliance with the requirements of confidentiality contained in this section.

(e) Any agency processing Department of Justice responses pursuant to this section shall submit an interagency agreement to the Department of Justice to establish authorization to submit and receive information pursuant to this section.

(f) All information obtained from the Department of Justice is confidential. Every agency handling Department of Justice information shall ensure the following:

(1) No recipient may disclose its contents or provide copies of information.

(2) Information received shall be stored in a locked file separate from other files, and shall only be accessible to the custodian of records.

(3) Information received shall be destroyed upon the hiring determination in accordance with subdivision (a) of Section 708 of Title 11 of the California Code of Regulations.

(4) Compliance with destruction, storage, dissemination, auditing, backgrounding, and training requirements as set forth in Sections 700 through 708, inclusive, of Title 11 of the California Code of Regulations and Section 11077 of the Penal Code governing the use and security of criminal offender record information is the responsibility of the entity receiving the information from the Department of Justice.

44836 EMPLOYMENT OF PERSONS CONVICTED OF SEX OFFENSES OR CONTROLLED SUBSTANCE OFFENSES

(a)(1) The governing board of a school district shall not employ or retain in employment persons in public school service who have been convicted, or who have been convicted following a plea of nolo contendere to charges, of any sex offense as defined in Section 44010.

(2) If a person's conviction of a sex offense as defined in Section 44010 is reversed and the person is acquitted of the offense in a new trial or the charges against him or her are dismissed, this section does not prohibit his or her employment thereafter. If the dismissal was pursuant to Section 1203.4 of the Penal Code and the victim of the sex offense was a minor, this section does prohibit the person's employment.

(b)(1) The governing board of a school district also shall not employ or retain in employment persons in public school service who have been convicted of any controlled substance offense as defined in Section 44011.

(2) If a person's conviction for a controlled substance offense as defined in Section 44011 is reversed and the person is acquitted of the offense in a new trial or the charges against him or her are dismissed, this section does not prohibit his or her employment thereafter.

(c) Notwithstanding subdivision (b), the governing board of a school district may employ a person convicted of a controlled substance offense in a position requiring certification qualifications if that person holds an appropriate credential issued by the Commission on Teacher Credentialing.

**44932 GROUNDS FOR DISMISSAL OF PERMANENT EMPLOYEES;
SUSPENSION OF EMPLOYEES**

(a) No permanent employee shall be dismissed except for one or more of the following causes:

- (1) Immoral or unprofessional conduct.
- (2) Commission, aiding, or advocating the commission of acts of criminal syndicalism, as prohibited by Chapter 188 of the Statutes of 1919¹, or in any amendment thereof.
- (3) Dishonesty.
- (4) Unsatisfactory performance.
- (5) Evident unfitness for service.
- (6) Physical or mental condition unfitting him or her to instruct or associate with children.
- (7) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him or her.
- (8) Conviction of a felony or of any crime involving moral turpitude.
- (9) Violation of Section 51530 or conduct specified in Section 1028 of the Government Code, added by Chapter 1418 of the Statutes of 1947.
- (10) Knowing membership by the employee in the Communist Party.
- (11) Alcoholism or other drug abuse which makes the employee unfit to instruct or associate with children.

(b) The governing board of a school district may suspend without pay for a specific period of time on grounds of unprofessional conduct a permanent certificated employee or, in a school district with an average daily attendance of less than 250 pupils, a probationary employee, pursuant to the procedures specified in Sections 44933, 44934, 44935, 44936, 44937, 44943, and 44944. This authorization shall not apply to any school district which has adopted a collective bargaining agreement pursuant to subdivision (b) of Section 3543.2 of the Government Code.

**44933 OTHER GROUNDS FOR DISMISSAL OR SUSPENSION; ADDITIONAL
APPLICATION OF SECTION**

A permanent employee may be dismissed or suspended on grounds of unprofessional conduct consisting of acts or omissions other than those specified in Section 44932, but any such charge shall specify instances of behavior deemed to constitute unprofessional conduct. This section shall also

¹ See Penal Code §§ 11400 to 11402 (Repealed).

apply to the suspension of probationary employees in a school district with an average daily attendance of less than 250 pupils.

44940 LEAVE OF ABSENCE; CERTIFICATED EMPLOYEE CHARGED WITH MANDATORY OR OPTIONAL LEAVE OF ABSENCE OFFENSE; SUSPENSION OF CREDENTIALS; DEFINITIONS

(a) For purposes of this section, "charged with a mandatory leave of absence offense" is defined to mean charged by complaint, information, or indictment filed in a court of competent jurisdiction with the commission of any sex offense as defined in Section 44010, or with the commission of any offense involving aiding or abetting the unlawful sale, use, or exchange to minors of controlled substances listed in Schedule I, II, or III, as contained in Section 11054, 11055, and 11056 of the Health and Safety Code, with the exception of marijuana, mescaline, peyote, or tetrahydrocannabinols.

(b) For purposes of this section, "charged with an optional leave of absence offense" is defined to mean a charge by complaint, information, or indictment filed in a court of competent jurisdiction with the commission of any controlled substance offense as defined in Section 44011 or 87011, or a violation or attempted violation of Section 187 of the Penal Code, or Sections 11357 to 11361, inclusive, 11363, 11364, or 11370.1 of the Health and Safety Code, insofar as these sections relate to any controlled substances except marijuana, mescaline, peyote, or tetrahydrocannabinols.

(c) For purposes of this section and Section 44940.5, the term "school district" includes county offices of education.

(d) Whenever any certificated employee of a school district is charged with a mandatory leave of absence offense, as defined in subdivision (a), the governing board of the school district shall immediately place the employee upon compulsory leave of absence for a period of time extending for not more than 10 days after the date of entry of the judgment in the proceedings. The employee's teaching or service credential shall be automatically suspended for the same period of time.

(e) Whenever any certificated employee of a school district is charged with an optional leave of absence offense as defined in subdivision (b), the governing board of the school district may immediately place the employee upon compulsory leave in accordance with the procedure in this section and Section 44940.5. If any certificated employee is charged with an offense deemed to fall into both the mandatory and the optional leave of absence categories, as defined in subdivisions (a) and (b), that offense shall be treated as a mandatory leave of absence offense for purposes of this section.

44940.5 COMPULSORY LEAVE OF ABSENCE; PROCEDURES; EXTENSION OF LEAVE; COMPENSATION; BOND OR SECURITY; REPORTS

Any certificated employee placed on compulsory leave of absence pursuant to Section 44940 and any classified employee placed on compulsory leave of absence pursuant to Section 45304 shall be subject to the following procedures:

(a) The governing board of the school district may extend the compulsory leave of absence of the employee beyond the initial period specified in Section

44940 or 45304, whichever is applicable, by giving notice to the employee within 10 days after the entry of judgment in the proceedings that the employee will be dismissed at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing as provided in this article.

(b) Any employee placed upon compulsory leave of absence pursuant to this section shall continue to be paid his or her regular salary during the period of his or her compulsory leave of absence if and during that time he or she furnishes to the school district a suitable bond, or other security acceptable to the governing board, as a guarantee that the employee will repay to the school district the amount of salary so paid to him or her during the period of the compulsory leave of absence in case the employee is convicted of the charges, or fails or refuses to return to service following an acquittal of the offense or dismissal of the charges. If the employee is acquitted of the offense, or the charges against the employee are dismissed, the school district shall reimburse the employee for the cost of the bond upon his or her return to service in the school district.

(c) If the employee does not elect to furnish bond, or other security acceptable to the governing board of the district, and if the employee is acquitted of the offense, or the charges against him or her are dismissed, the school district shall pay to the employee his or her full compensation for the period of the compulsory leave of absence upon his or her return to service in the school district.

(d) Any action taken pursuant to this section by a governing board shall be reported immediately to the Commission for Teacher Preparation and Licensing. The commission shall give priority to the investigation and resolution of these cases.

44942 SUSPENSION OR TRANSFER OF CERTIFICATED EMPLOYEE ON GROUND OF MENTAL ILLNESS; EXAMINATION; MANDATORY SICK LEAVE

(a) Any certificated employee may be suspended or transferred to other duties by the governing board if the board has reasonable cause to believe that the employee is suffering from mental illness of such a degree as to render him or her incompetent to perform his or her duties.

(b) The governing board shall immediately, upon any suspension or transfer under this section, give to the employee a written statement of the facts giving rise to the board's belief, and an opportunity to appear before the board within 10 days to explain or refute the charges.

(c) If, after the employee's appearance before the board, the board decides to continue the suspension or transfer, or if the employee chooses not to appear before the board, the employee shall then be offered, in writing, the opportunity of being examined by a panel consisting of three persons who are either psychiatrists or psychologists, at least one of whom shall be a psychiatrist, selected by him or her from a list of psychiatrists and psychologists to be provided by the board. To assist the panel in making its determination, the governing board shall supply to the panel, prior to the date scheduled for the examination, a list of the duties of the position from which

the employee was suspended or transferred. The employee shall continue to receive his or her regular salary and all other benefits of employment during the period dating from his or her suspension to the filing of the report of the panel with the governing board.

(d) The examination shall be conducted at school district expense within 15 days of any suspension or transfer ordered under this section. The employee shall submit to the examination, but shall be entitled to be represented by a psychiatrist, psychologist licensed under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code, or physician of his or her own choice, and any report of the psychiatrist, psychologist, or physician selected by him or her shall be filed with the panel at the request of the employee.

A written report of the panel on the examination of the suspended or transferred employee shall be submitted to the governing board no later than 10 days after completion of the examination. A copy shall be supplied to the employee upon request. The report shall contain a finding on whether the employee is suffering from mental illness of such a degree as to render him or her incompetent to perform his or her duties.

(e) If a majority of the panel conclude that the employee should be permitted to return to his or her duties, no written record of the suspension or of the determination of the panel shall be retained, and in all respects any written record concerning the employee shall appear as it did before the suspension was made.

(f) If a majority of the panel find in their report that the employee is suffering from mental illness of such a degree as to render him or her incompetent to perform his or her duties, the governing board may, upon receipt of the report, place the employee on mandatory sick leave of absence. Any mandatory sick leave of absence imposed under this section shall not exceed two years, during which period the employee shall be entitled to sick leave and hospital and medical benefits that he or she accrued during his or her employment by the governing board but only to the extent of such accrual.

(g) Any employee placed on mandatory sick leave of absence pursuant to this section may, in writing, immediately demand a hearing. Upon receipt of that written demand, the governing board shall file a complaint in the superior court of the county in which the school district, or the major part thereof, is located, setting forth the charges against the employee and asking that the court inquire into the charges and determine whether or not the charges are true, and, if true, whether they constitute sufficient ground for placing the employee on mandatory sick leave of absence, and for a judgment pursuant to its findings.

(h) If the court finds that the employee was not, at the time of the suspension, incompetent to perform his or her assigned duties and should not have been placed on mandatory sick leave of absence, the employee shall be immediately reinstated to the same or a substantially similar position with full back salary, and any written record of the suspension or transfer or any report of the panel shall be destroyed.

(i) If the court confirms the placing of the employee on mandatory sick leave, or if the employee does not seek a hearing, then, upon written request of the employee made not earlier than six months nor later than two years after the date he or she was placed on mandatory sick leave of absence, a new panel consisting of three persons who are either psychiatrists or psychologists, at least one of whom shall be a psychiatrist, shall be convened by, and at the expense of, the governing board to review its original conclusion. If the original conclusion is not changed by the new panel as a result of such review, the employee shall be continued on the mandatory sick leave of absence, except that when the employee's total period of absence exceeds two years, the governing board shall either rescind its action and reinstate the employee to the same or a substantially similar position, or shall serve the employee with a notice of intention to dismiss him or her, and proceed according to Section 44943.

(j) If a majority of the new panel concludes in its report, or any subsequent review thereof, that the suspended employee or employee on mandatory sick leave of absence should be permitted to return to his or her duties, or if the court so concludes, the governing board shall take immediate action to restore the employee to the position from which he or she was suspended or transferred or to a substantially similar position.

(k) Every hearing and action by or before the governing board pursuant to this section shall be in executive session, and no decision, action, or occurrence therein shall be made public, unless the employee so requests in writing.

(l) Nothing in this section shall be construed to supersede Section 44949.

44947 REQUIREMENTS UPON GOVERNING BOARD ON DISMISSAL FOR CERTAIN CRIMES

If an employee is dismissed for immoral conduct or conviction of a felony or crime involving moral turpitude, the governing board shall transmit to the Commission on Teacher Credentialing and to the county board of education which issued the certificate under which the employee was serving at the time of his dismissal, a copy of the reporter's transcript of the hearing accompanied by a request that any certificate issued by the county board of education to the employee be revoked if the employee is not reinstated upon appeal.

51550 Sex Education Courses

51550 SEX EDUCATION COURSES

(Some provisions omitted for brevity)

The certification document of any person charged with the responsibility of making any instructional material available for inspection under this section or who is charged with the responsibility of notifying a parent or guardian of any class conducted within the purview of this section, and who knowingly and willfully fails to make such instructional material available for inspection or to notify such parent or guardian, may be revoked or suspended because of such act. The certification document of any person who knowingly and willfully requires a pupil to attend a class within the purview of this section when a request that the pupil not attend has been received from the parent or guardian may be revoked or suspended because of such act.

PERJURY AND SUBORNATION OF PERJURY

118	Perjury defined, evidence necessary to support conviction
125	Unqualified Statement of that not known to be true
126	Punishment
127	Subornation of perjury; definition; punishment
129	False return required to be under oath

118 PERJURY DEFINED, EVIDENCE NECESSARY TO SUPPORT CONVICTION

(a) Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury.

This subdivision is applicable whether the statement, or the testimony, declaration, deposition or certification is made or subscribed within or without the State of California.

(b) No person shall be convicted of perjury where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant. Proof of falsity may be established by direct or indirect evidence.

125 UNQUALIFIED STATEMENT OF THAT NOT KNOWN TO BE TRUE

Statement of that which one does not know to be true. An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false.

126 PUNISHMENT

Perjury is punishable by imprisonment in the state prison for two, three or four years.

127 SUBORNATION OF PERJURY; DEFINITION; PUNISHMENT

Subornation of Perjury. Every person who willfully procures another person to commit perjury is guilty of subornation of perjury, and is punishable in the same manner as he would be if personally guilty of the perjury so procured.

129 FALSE RETURN REQUIRED TO BE UNDER OATH

Every person who, being required by law to make any return, statement, or report, under oath, willfully makes and delivers any such return, statement,

or report, purporting to be under oath, knowing the same to be false in any particular, is guilty of perjury, whether such oath was in fact taken or not.

REPORTING OF ARRESTS FOR SEX OFFENSES

- 290** **Registration of sex offenders**
- 290.1** **Registration of sex offenders, exception**
- 290.5** **Pardon or certificate of rehabilitation; relief
 from duty to register**
- 291** **School employees; arrest for sex offense;
 notice to school authorities**

290 REGISTRATION OF SEX OFFENDERS

(a)(1)(A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within, California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area, or city that has no police department, and, additionally, with the chief of police of a campus of the University of California or the California State University, or community college if he or she is residing, or if he or she has no residence, is located, upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has more than one residence address or location at which he or she regularly resides or is located, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides or is located. If all of the addresses or locations are within the same jurisdiction, the person shall provide the registering authority with all of the addresses or locations where he or she regularly resides or is located.

(C) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 90 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(D) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A), including, verifying his or her name, and address, or temporary location, and place of employment including the name and address of the employer, on a form as may be directed by the Department of Justice.

(E) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions

Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place or employment, including the name and address of the employer, in a manner established by the Department of Justice.

(F) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(G) Persons required to register in their state of residence who are out-of-state residents employed in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph shall become operative on November 25, 2000.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314; any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been, or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and

Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F)(i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, which demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish

the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b)(1) Any person who, is released, discharged or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement or hospital shall retain one copy.

(c) Any person who, is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, granted conditional release without supervised probation, or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice,

stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d)(1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a or 289.

(4) Prior to discharge from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of both of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address..

(B) The fingerprints and photograph of the person.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f)(1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g)(1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraphs (5) and (7), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the insanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which

registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision (a) shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (C) of paragraph (1) of subdivision (a) to update his or her registration every 90 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (C) of paragraph (1) of subdivision (a) shall update their registration every 90 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(l)(1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m)(1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including but not limited to the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

- (B) Identifies the appropriate scope of further disclosure.
- (3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.
- (4) The information that may be disclosed pursuant to this section includes the following:
 - (A) The offender's full name.
 - (B) The offender's known aliases.
 - (C) The offender's gender.
 - (D) The offender's race.
 - (E) The offender's physical description.
 - (F) The offender's photograph.
 - (G) The offender's date of birth.
 - (H) Crimes resulting in registration under this section.
 - (I) The offender's address, which must be verified prior to publication.
 - (J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.
 - (K) Type of victim targeted by the offender.
 - (L) Relevant parole or probation conditions, such as one prohibiting contact with children.
 - (M) Date of crimes resulting in classification under this section.
 - (N) Date of release from confinement.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(5) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(6) For purposes of this section, "likely to encounter" means both of the following:

- (A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.
- (B) The types of interaction that ordinarily occur at that location and other

circumstances indicate that contact with the offender is reasonably probable.

(7) For purposes of this section, "reasonably suspects" means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(8) For purposes of this section, "at risk" means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(9) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4, and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, or Section 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d, or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is of the first degree, Section 597, or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraph (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) "Confinement" means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 or Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) "Designated law enforcement entity" means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any campus of the University of California or California State University, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide

to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified high-risk sex offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) of subdivision (n) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(o) Agencies disseminating information to the public pursuant to Section 290.4 shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years. Agencies disseminating information to the public pursuant to subdivision (n) shall maintain records of the means and dates of dissemination for a minimum of five years.

(p)(1) Any law enforcement agency and employees of any law enforcement agency, shall be immune from liability for good faith conduct under this section. For the purposes of this section, "law enforcement agency" means the Attorney General of California, every district attorney, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(q) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison. Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

290.1 REGISTRATION OF SEX OFFENDERS, EXCEPTION

Notwithstanding Section 1203.4 and except as provided in Section 290.5, a person who is convicted of a sex offense for which registration is required under Section 290 shall not be relieved from the duty to register under that section.

290.5 PARDON OR CERTIFICATE OF REHABILITATION; RELIEF FROM DUTY TO REGISTER

(a) A person required to register under Section 290 may initiate a proceeding under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3, and, except persons described in paragraph (1) of subdivision (a) of Section 290.4, upon obtaining a certificate of rehabilitation, shall be relieved of any further duty to register under Section 290 if not in custody, on parole, or on probation. This certificate shall not relieve persons described in paragraph (1) of subdivision (a) of Section 290.4 of the duty to register under Section 290 and shall not relieve a petitioner of the duty to register under Section 290 for any offense subject to that section of which he or she is convicted in the future.

(b)(1) Except as provided in paragraphs (2) and (3), a person described in paragraph (1) of subdivision (a) of Section 290.4 shall not be relieved of the duty to register until that person has obtained a full pardon as provided in Chapter 1 (commencing with Section 4800) or Chapter 3 (commencing with Section 4850) of Title 6 of Part 3.

(2) This subdivision does not apply to misdemeanor violations of Section 647.6.

(3) The court, upon granting a petition for a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3, if the petition was granted prior to January 1, 1998, may relieve a person of the duty to register under Section 290 for a violation of Section 288 or 288.5, provided that the person was granted probation pursuant to subdivision (c) of Section 1203.066, has complied with the provisions of Section 290 for a continuous period of at least 10 years immediately preceding the filing of the petition, and has not been convicted of a felony during that period.

291 SCHOOL EMPLOYEES; ARREST FOR SEX OFFENSE; NOTICE TO SCHOOL AUTHORITIES

Every sheriff or chief of police, upon the arrest for any of the offenses enumerated in Section 290 or in subdivision 1 of Section 261, or Section 44010 of the Education Code of any school employee, shall do either of the following:

(a) If the school employee is a teacher in any of the public schools of this

state, he or she shall immediately notify by telephone the superintendent of schools of the school district employing the teacher and shall immediately give written notice of the arrest to the Commission for Teacher Preparation and Licensing and to the superintendent of schools in the county wherein the person is employed. Upon receipt of the notice, the county superintendent of schools shall immediately notify the governing board of the school district employing the person.

(b) If the school employee is a nonteacher in any of the public schools of this state, he or she shall immediately notify by telephone the superintendent of schools of the school district employing the nonteacher and shall immediately give written notice of the arrest to the governing board of the school district employing the person.

SPECIAL PROCEEDINGS IN NARCOTICS AND DRUG ABUSE CASES

1000.3	Unsatisfactory performance by defendant, or engagement in criminal conduct
1000.4	Successful completion of program; record; disclosure of arrest
1000.5	Preguilty plea drug court program; operation of program; effect of defendant's performance
1001.9	Successful completion of program; record; disclosure of arrest

1000.3 UNSATISFACTORY PERFORMANCE BY DEFENDANT, OR ENGAGEMENT IN CRIMINAL CONDUCT

If it appears to the prosecuting attorney, the court, or the probation department that the defendant is performing unsatisfactorily in the assigned program, or that the defendant is not benefiting from education, treatment, or rehabilitation, or that the defendant is convicted of a misdemeanor that reflects the defendant's propensity for violence, or the defendant is convicted of a felony, or the defendant has engaged in criminal conduct rendering him or her unsuitable for deferred entry of judgment, the prosecuting attorney, the court on its own, or the probation department may make a motion for entry of judgment.

After notice to the defendant, the court shall hold a hearing to determine whether judgment should be entered.

If the court finds that the defendant is not performing satisfactorily in the assigned program, or that the defendant is not benefiting from education, treatment, or rehabilitation, or the court finds that the defendant has been convicted of a crime as indicated above, or that the defendant has engaged in criminal conduct rendering him or her unsuitable for deferred entry of judgment, the court shall render a finding of guilt to the charge or charges pled, enter judgment, and schedule a sentencing hearing as otherwise provided in this code.

If the defendant has performed satisfactorily during the period in which deferred entry of judgment was granted, at the end of that period, the criminal charges shall be dismissed.

Prior to dismissing the charge or charges, the court shall consider the defendant's ability to pay and whether the defendant has paid a diversion restitution fee pursuant to Section 1001.90, if ordered, and an administration fee to the probation department, if ordered, and has met his or her financial obligation to the program, if any.

1000.4 SUCCESSFUL COMPLETION OF PROGRAM; RECORD; DISCLOSURE OF ARREST

(a) Any record filed with the Department of Justice shall indicate the disposition in those cases deferred pursuant to this chapter. Upon successful completion of a deferred entry of judgment program, the arrest upon which the judgment was deferred shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted deferred entry of judgment for the offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a deferred entry of judgment program shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(b) The defendant shall be advised that, regardless of his or her successful completion of the deferred entry of judgment program, the arrest upon which the judgment was deferred may be disclosed by the Department of Justice in response to any peace officer application request and that notwithstanding subdivision (a), this section does not relieve him or her of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

1000.5 PREGUILTY PLEA DRUG COURT PROGRAM; OPERATION OF PROGRAM; EFFECT OF DEFENDANT'S PERFORMANCE

(a) The presiding judge of the superior or municipal court, or a judge designated by the presiding judge, together with the district attorney and the public defender, may agree in writing to establish and conduct a preguilty plea drug court program pursuant to the provisions of this chapter, wherein criminal proceedings are suspended without a plea of guilty for designated defendants. The drug court program shall include a regimen of graduated sanctions and rewards, individual and group therapy, urine analysis testing commensurate with treatment needs, close court monitoring and supervision of progress, educational or vocational counseling as appropriate, and other requirements as agreed to by the presiding judge or his or her designee, the district attorney, and the public defender. If there is no agreement in writing for a preguilty plea program by the presiding judge or his or her designee, the district attorney, and the public defender, the program shall be operated as a deferred entry of judgment program as provided in this chapter.

(b) The provisions of Section 1000.3 and Section 1000.4 regarding satisfactory and unsatisfactory performance in a program shall apply to preguilty plea programs. If the court finds that (1) the defendant is not performing satisfactorily in the assigned program, (2) the defendant is not benefiting from education, treatment, or rehabilitation, (3) the defendant

has been convicted of a crime specified in Section 1000.3, or (4) the defendant has engaged in criminal conduct rendering him or her unsuitable for the preguilty plea program, the court shall reinstate the criminal charge or charges. If the defendant has performed satisfactorily during the period of the preguilty plea program, at the end of that period, the criminal charge or charges shall be dismissed and the provisions of Section 1000.4 shall apply.

1001.9 SUCCESSFUL COMPLETION OF PROGRAM; RECORD; DISCLOSURE OF ARREST

(a) Any record filed with the Department of Justice shall indicate the disposition in those cases diverted pursuant to this chapter. Upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The divertee may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a diversion program shall not, without the divertee's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(b) The divertee shall be advised that, regardless of his or her successful completion of diversion, the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to any peace officer application request and that notwithstanding subdivision (a), this section does not relieve him or her of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

PLEA

1016(3) Plea of Nolo Contendere

1016(3) EFFECT OF PLEA OF NOLO CONTENDERE (Some material omitted for brevity)

Nolo contendere, subject to the approval of the court. The court shall ascertain whether the defendant completely understands that a plea of nolo contendere shall be considered the same as a plea of guilty and that, upon a plea of nolo contendere, the court shall find the defendant guilty. The legal effect of such a plea, to a crime punishable as a felony, shall be the same as that of a plea of guilty for all purposes. In cases other than those punishable as felonies, the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, and factual basis for, the plea may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based.

JUDGMENT

1203.4 Discharged petitioner; change of plea or vacation of verdict; dismissal of charge

1203.4 DISCHARGED PETITIONER; CHANGE OF PLEA OR VACATION OF VERDICT; DISMISSAL OF CHARGE

(a) In any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, at any time after the termination of the period of probation, if he or she is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty; or, if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall thereupon dismiss the accusations or information against the defendant and except as noted below, he or she shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted, except as provided in Section 13555 of the Vehicle Code. The probationer shall be informed, in his or her probation papers, of this right and privilege and his or her right, if any, to petition for a certificate of rehabilitation and pardon. The probationer may make the application and change of plea in person or by attorney, or by the probation officer authorized in writing. However, in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. The order shall state, and the probationer shall be informed, that the order does not relieve him or her of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery.

Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess, or have in his or her custody or control any firearm capable of being concealed upon the person or prevent his or her conviction under Section 12021.

This subdivision shall apply to all applications for relief under this section which are filed on or after November 23, 1970.

(b) Subdivision (a) of this section does not apply to any misdemeanor which is within the provisions of subdivision (b) of Section 42001 of the Vehicle Code, to any violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, or to any infraction.

(c) A person who petitions for a change of plea or setting aside of a verdict under this section may be required to reimburse the county for the actual cost of services rendered, whether or not the petition is granted and the

records are sealed or expunged, at a rate to be determined by the county board of supervisors not to exceed one hundred twenty dollars (\$120), and to reimburse any city for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the city council not to exceed one hundred twenty dollars (\$120). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (g) of Section 987.8 and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the cost for services established pursuant to this subdivision.

(d) No relief shall be granted under this section unless the prosecuting attorney has been given 15 days' notice of the petition for relief. The probation officer shall notify the prosecuting attorney when a petition is filed, pursuant to this section.

It shall be presumed that the prosecuting attorney has received notice if proof of service is filed with the court.

(e) If, after receiving notice pursuant to subdivision (d), the prosecuting attorney fails to appear and object to a petition for dismissal, the prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition.

(f) Notwithstanding the above provisions or any other provision of law, the Governor shall have the right to pardon a person convicted of a violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, if there are extraordinary circumstances.

RESTORATION OF RIGHTS

4852.01 Petition for certificate of rehabilitation and pardon

4852.01 PETITION FOR CERTIFICATE OF REHABILITATION AND PARDON

(a) Any person convicted of a felony who has been released from a state prison or other state penal institution or agency in California, whether discharged on completion of the term for which he was sentenced or released on parole prior to May 13, 1943, who has not been incarcerated in a state prison or other state penal institution or agency since his or her release and who presents satisfactory evidence of a three-year residence in this state immediately prior to the filing of the petition for a certificate of rehabilitation and pardon provided for by this chapter, may file the petition pursuant to the provisions of this chapter.

(b) Any person convicted of a felony who, on May 13, 1943, was confined in a state prison or other institution or agency to which he or she was committed and any person convicted of a felony after that date who is committed to a state prison or other institution or agency may file a petition for a certificate of rehabilitation and pardon pursuant to the provisions of this chapter.

(c) Any person convicted of a felony or any person who is convicted of a misdemeanor violation of any sex offense specified in Section 290, the accusatory pleading of which has been dismissed pursuant to Section 1203.4, may file a petition for certificate of rehabilitation and pardon pursuant to the provisions of this chapter if the petitioner has not been incarcerated in any prison, jail, detention facility, or other penal institution or agency since the dismissal of the accusatory pleading and is not on probation for the commission of any other felony, and the petitioner presents satisfactory evidence of five years residence in this state prior to the filing of the petition.

(d) This chapter shall not apply to persons serving a mandatory life parole, persons committed under death sentences, persons convicted of a violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, or persons in the military service.

(e) Notwithstanding the above provisions or any other provision of law, the Governor shall have the right to pardon a person convicted of a violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, if there are extraordinary circumstances.

CRIMINAL RECORDS, PROBATION

11105.2 Subsequent arrest notification service

11105.3 Records of conviction involving sex crimes, drug crimes, or crimes of violence

11105.2 SUBSEQUENT ARREST NOTIFICATION SERVICE

(a) The Department of Justice may provide subsequent arrest notification to any agency authorized by Section 11105 to receive state summary criminal history information to assist in fulfilling employment, licensing, or certification duties upon the arrest of any person whose fingerprints are maintained on file at the Department of Justice as the result of an application for licensing, employment, or certification. The notification shall consist of a current copy of the person's state summary criminal history transcript.

(b) Any agency, other than a law enforcement agency employing peace officers as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.31, shall enter into a contract with the Department of Justice in order to receive notification of subsequent arrests for licensing, employment, or certification purposes.

(c) Any agency which submits the fingerprints of applicants for licensing, employment, or certification to the Department of Justice for the purpose of establishing a record of the applicant to receive notification of subsequent arrests shall immediately notify the department when the employment of the applicant is terminated, when the applicant's license or certificate is

revoked, or when the applicant may no longer renew or reinstate the license or certificate. The Department of Justice shall terminate subsequent arrest notification on any applicant upon the request of the licensing, employment, or certifying authority.

(d) Any agency receiving a notification of subsequent arrest for a person unknown to the agency, or for a person no longer employed by the agency, or no longer eligible to renew the certificate or license for which subsequent arrest notification service was established shall immediately return the subsequent arrest notification to the Department of Justice, informing the department that the agency is no longer interested in the applicant. The agency shall not record or otherwise retain any information received as a result of the subsequent arrest notice.

(e) Any agency which submits the fingerprints of an applicant for employment, licensing, or certification to the Department of Justice for the purpose of establishing a record at the department to receive notification of subsequent arrest shall immediately notify the department if the applicant is not subsequently employed, or if the applicant is denied licensing or certification.

(f) An agency which fails to provide the Department of Justice with notification as set forth in subdivisions (c), (d), and (e) may be denied further subsequent arrest notification service.

(g) Notwithstanding subdivisions (c), (d), and (f), subsequent arrest notification by the Department of Justice and retention by the employing agency shall continue as to retired peace officers listed in subdivision (c) of Section 830.5.

11105.3 RECORDS OF CONVICTIONS INVOLVING SEX CRIMES, DRUG CRIMES, OR CRIMES OF VIOLENCE

(a) Notwithstanding any other law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (h) of a person who applies for a license, employment or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged a nonprofit organization. The department shall destroy an application within six months after the requested information is sent to the employer and applicant.

(c)(1) Where a request pursuant to this section reveals that a prospective employee or volunteer has been convicted of an offense specified in paragraph (1) of subdivision (H), and where the agency or employer hires the prospective employee or volunteer, the agency or employer shall notify

the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer. The notice shall be given to the parents or guardians with whom the child resides, and shall be given at least 10 days prior to the day that the employee or volunteer begins his or her duties or tasks. Notwithstanding any other provision of law, any person who conveys or receives information in good faith conformity with this section is exempt from prosecution under Section 11142 or 11143 for the conveying or receiving of information. Notwithstanding subdivision (d), the notification requirements of this subdivision shall apply as an additional requirement of any other provision of law requiring criminal record access or dissemination of criminal history information.

(2) The notification requirement pursuant to paragraph (1) shall not apply to a misdemeanor conviction for violating Section 261.5 or to a conviction for violating Section 262 or 273.5. Nothing in this paragraph shall preclude an employer from requesting records of convictions for violating Section 261.5, 262, or 273.5 from the Department of Justice pursuant to this section.

(d) Nothing in this section supersedes any law requiring criminal record access or dissemination of criminal history information. In any conflict with another statute, dissemination of criminal history information shall be pursuant to the mandatory statute. This subdivision applies to, but is not limited to, requirements pursuant to Article 1 (commencing with Section 1500) of Chapter 3 of, and Chapter 3.2 (commencing with section 1569) and Chapter 3.4 (commencing with Section 1596.70) of, Division 2 of, and Section 1522 of, the Health and Safety Code, and Sections 8712, 8811, and 8908 of the Family Code.

(e) The department may adopt regulations to implement the provisions of this section as necessary.

(f) As used in this section "employer" means any nonprofit corporation or other organizations specified by the Attorney General which employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

(g) As used in this section, "human resource agency" means a public or private entity, excluding any agency responsible for licensing of facilities pursuant to the California Community Care Facilities Act (Chapter 3 [commencing with Section 1500]), the California Residential Care Facilities for the Elderly Act (Chapter 3.2 [commencing with Section 1569]), Chapter 3.01 (commencing with Section 1568.01), and the California Child Day Care Facilities Act (Chapter 3.4 [commencing with Section 1596.70]) of Division 2 of the Health and Safety Code, responsible for determining the character and fitness of a person who is (1) applying for a license, employment, or as a volunteer within the human services field that involves the care and security of children, the elderly, the handicapped, or the mentally impaired, or (2) applying to adopt a child or to be a foster parent.

(h) Records of the following offenses shall be furnished as provided in subdivision (a):

(1) Violations or attempted violations of Section 220, 261.5, 262, 273a, 273d, or 273.5, or any sex offense listed in Section 290, except for the offense specified in subdivision (d) of Section 243.4.

(2) Any crime described in the California Uniform Controlled Substances Act (Division 10 [commencing with Section 11000] of the Health and Safety Code), provided that, except as otherwise provided in subdivision (c), no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(3) Any felony or misdemeanor conviction within 10 years of the date of the employer's request under subdivision (a), for a violation or attempted violation of Chapter 3 (commencing with Section 207), Section 211 or 215, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022 in the commission of that offense, Section 217.1, Chapter 8 (commencing with Section 236), Chapter 9 (commencing with Section 240), and for a violation of any of the offenses specified in subdivision (c) of Section 667.5, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined this section within the immediately preceding 10-year period.

(4) A conviction for a violation or attempted violation of an offense committed outside the State of California shall be furnished if the offense would have been a crime as defined in this section if committed in California.

(i) Except as provided in subdivision (c), any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose it was acquired.

MARIJUANA

- 11357 Unauthorized possession;
 punishment; prior conviction;
 possession in school or on school
 grounds**
- 11361 Adults employing or selling to
 minors; minors under or over 14
 years of age; punishments**
- 11361.5 Destruction of arrest and
 conviction records; applicable
 offenses; method; records not
 applicable; costs**
- 11361.7 Accuracy, relevancy, timeliness
 and completeness of record
 subject to destruction; alteration
 of records; questions on prior
 criminal record; application of
 section**

**11357 UNAUTHORIZED POSSESSION; PUNISHMENT; PRIOR
CONVICTION; POSSESSION IN SCHOOL OR ON SCHOOL GROUNDS**

(a) Except as authorized by law, every person who possesses any concentrated cannabis shall be punished by imprisonment in the county jail for a period of not more than one year or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment, or shall be punished by imprisonment in the state prison.

(b) Except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100). Notwithstanding other provisions of law, if such person has been previously convicted three or more times of an offense described in this subdivision during the two-year period immediately preceding the date of commission of the violation to be charged, the previous convictions shall also be charged in the accusatory pleading and, if found to be true by the jury upon a jury trial or by the court upon a court trial or if admitted by the person, the provisions of Sections 1000.1 and 1000.2 of the Penal Code shall be applicable to him, and the court shall divert and refer him for education, treatment, or rehabilitation, without a court hearing or determination or the concurrence of the district attorney, to an appropriate community program which will accept him. If the person is so diverted and referred he shall not be subject to the fine specified in this subdivision. If no community program will accept him, the person shall be subject to the fine specified in this subdivision. In any case in which a person is arrested for a violation of this subdivision and does not demand to be taken before a magistrate, such person shall be released by the arresting officer upon presentation of satisfactory evidence of identity and giving his written promise to appear in court, as provided in Section 853.6 of the Penal Code, and shall not be subjected to booking.

(c) Except as authorized by law, every person who possesses more than 28.5 grams of marijuana, other than concentrated cannabis, shall be punished by imprisonment in the county jail for a period of not more than six months or by a fine of not more than five hundred (\$500), or by both such fine and imprisonment.

(d) Except as authorized by law, every person 18 years of age or over who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500), or by imprisonment in the county jail for a period of not more than 10 days, or both.

(e) Except as authorized by law, every person under the age of 18 who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be subject to the following dispositions:

(1) A fine of not more than two hundred fifty (\$250), upon a finding that a first offense has been committed.

(2) A fine of not more than five hundred dollars (\$500), or commitment to a juvenile hall, ranch, camp, forestry camp, or secure juvenile home for a period of not more than 10 days, or both, upon a finding that a second or subsequent offense has been committed.

11361 ADULTS EMPLOYING OR SELLING TO MINORS; MINORS UNDER OR OVER 14 YEARS OF AGE; PUNISHMENTS

(a) Every person 18 years of age or over who hires, employs, or uses a minor in unlawfully transporting, carrying, selling, giving away, preparing for sale, or peddling any marijuana, who unlawfully sells, or offers to sell, any marijuana to a minor under 14 years of age, or who induces a minor to use marijuana in violation of law shall be punished by imprisonment in the state prison for a period of three, five, or seven years.

(b) Every person 18 years of age or over who furnishes, administers, or gives, or offers to furnish, administer, or give, any marijuana to a minor 14 years of age or older shall be punished by imprisonment in the state prison for a period of three, four, or five years.

11361.5 DESTRUCTION OF ARREST AND CONVICTION RECORDS; APPLICABLE OFFENSES; METHOD; RECORDS NOT APPLICABLE; COSTS

(a) Records of any court of this state, any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, or of any state agency pertaining to the arrest or conviction of any person for a violation of subdivision (b), (c), (d), or (e) of Section 11357 or subdivision (b) of Section 11360, shall not be kept beyond two years from the date of the conviction, or from the date of the arrest if there was no conviction, except with respect to a violation of subdivision (e) of Section 11357 the records shall

be retained until the offender attains the age of 18 years at which time the records shall be destroyed as provided in this section. Any court or agency having custody of the records shall provide for the timely destruction of the records in accordance with subdivision (c). The requirements of this subdivision do not apply to records of any conviction occurring prior to January 1, 1976, or records of any arrest not followed by a conviction occurring prior to that date.

(b) This subdivision applies only to records of convictions and arrests not followed by conviction occurring prior to January 1, 1976, for any of the following offenses:

- (1) Any violation of Section 11357 or a statutory predecessor thereof.
- (2) Unlawful possession of a device, contrivance, instrument, or paraphernalia used for unlawfully smoking marijuana, in violation of Section 11364, as it existed prior to January 1, 1976, or a statutory predecessor thereof.
- (3) Unlawful visitation or presence in a room or place in which marijuana is being unlawfully smoked or used, in violation of Section 11365, as it existed prior to January 1, 1976, or a statutory predecessor thereof.
- (4) Unlawfully using or being under the influence of marijuana, in violation of Section 11550, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

Any person subject to an arrest or conviction for those offenses may apply to the Department of Justice for destruction of records pertaining to the arrest or conviction if two or more years have elapsed since the date of the conviction, or since the date of the arrest if not followed by a conviction. The application shall be submitted upon a form supplied by the Department of Justice and shall be accompanied by a fee, which shall be established by the department in an amount which will defray the cost of administering this subdivision and costs incurred by the state under subdivision (c), but which shall not exceed thirty-seven dollars and fifty cents (\$37.50). The application form may be made available at every local police or sheriff's department and from the Department of Justice and may require that information which the department determines is necessary for purposes of identification.

The department may request, but not require, the applicant to include a self-administered fingerprint upon the application. If the department is unable to sufficiently identify the applicant for purposes of this subdivision without the fingerprint or without additional fingerprints, it shall so notify the applicant and shall request the applicant to submit any fingerprints which may be required to effect identification, including a complete set if necessary, or, alternatively, to abandon the application and request a refund of all or a portion of the fee submitted with the application, as provided in this section. If the applicant fails or refuses to submit fingerprints in accordance with the department's request within a reasonable time which shall be established by the department, or if the applicant requests a refund of the fee, the department shall promptly mail a refund to the applicant at the address specified in the application or at any other address which may be specified by the applicant. However, if the department has notified the applicant that election to abandon the application will result in forfeiture of a specified

amount which is a portion of the fee, the department may retain a portion of the fee which the department determines will defray the actual costs or processing the application, provided the amount of the portion retained shall not exceed ten dollars (\$10).

Upon receipt of a sufficient application, the Department of Justice shall destroy records of the department, if any, pertaining to the arrest or conviction in the manner prescribed by subdivision (c) and shall notify the Federal Bureau of Investigation, the law enforcement agency which arrested the applicant, and, if the applicant was convicted, the probation department which investigated the applicant and the Department of Motor Vehicles, of the application.

(c) Destruction of records of arrest or conviction pursuant to subdivision (a) or (b) shall be accomplished by permanent obliteration of all entries or notations upon the records pertaining to the arrest or conviction, and the record shall be prepared again so that it appears that the arrest or conviction never occurred. However, where (1) the only entries upon the record pertain to the arrest or conviction and (2) the record can be destroyed without necessarily effecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(d) Notwithstanding subdivision (a) or (b), written transcriptions of oral testimony in court proceedings and published judicial appellate reports are not subject to this section. Additionally, no records shall be destroyed pursuant to subdivision (a) if the defendant or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of those records has received a certified copy of the complaint in the civil action, until the civil action has finally been resolved. Immediately following the final resolution of the civil action, records subject to subdivision (a) shall be destroyed pursuant to subdivision (c) if more than two years have elapsed from the date of the conviction or arrest without conviction.

11361.7. ACCURACY, RELEVANCY, TIMELINESS AND COMPLETENESS OF RECORD SUBJECT TO DESTRUCTION; ALTERATION OF RECORDS; QUESTIONS ON PRIOR CRIMINAL RECORD; APPLICATION OF SECTION

(a) Any record subject to destruction or permanent obliteration pursuant to Section 11361.5, or more than two years of age, or a record of a conviction for an offense specified in subdivision (a) or (b) of Section 11361.5 which became final more than two years previously, shall not be considered to be accurate, relevant, timely, or complete for any purposes by any agency or person. The provisions of this subdivision shall be applicable for purposes of the Privacy Act of 1974 (5 U.S.C. Section 552a) to the fullest extent permissible by law, whenever any information or record subject to destruction or permanent obliteration under Section 11361.5 was obtained by any state agency, local public agency, or any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, and is thereafter shared with or disseminated to any agency of the federal government.

(b) No public agency shall alter, amend, assess, condition, deny, limit, postpone, qualify, revoke, surcharge, or suspend any certificate, franchise,

incident, interest, license, opportunity, permit, privilege, right, or title of any person because of an arrest or conviction for an offense specified in subdivision (a) or (b) of Section 11361.5, or because of the facts or events leading to such an arrest or conviction, on or after the date the records of such arrest or conviction are required to be destroyed by subdivision (a) of Section 11361.5, or two years from the date of such conviction or arrest without conviction with respect to arrests and convictions occurring prior to January 1, 1976. As used in this subdivision, "public agency" includes, but is not limited to, any state, county, city and county, city, public or constitutional corporation or entity, district, local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency thereof.

(c) Any person arrested or convicted for an offense specified in subdivision (a) or (b) of Section 11361.5 may, two years from the date of such a conviction, or from the date of the arrest if there was no conviction, indicate in response to any question concerning his prior criminal record that he was not arrested or convicted for such offense.

(d) The provisions of this section shall be applicable without regard to whether destruction or obliteration of records has actually been implemented pursuant to Section 11361.5.

REGISTRATION OF CONTROLLED SUBSTANCE OFFENDERS

- 11590 Persons required to register**
- 11591 School employee; arrest for
 controlled substance offense;
 notice to school authorities**

11590 PERSONS REQUIRED TO REGISTER

(a) Except as provided in subdivisions (c) and (d), any person who is convicted in the State of California of any offense defined in Section 11350, 11351, 11351.5, 11352, 11353, 11353.5, 11353.7, 11354, 11355, 11357, 11358, 11359, 11360, 11361, 11363, 11366, 11366.5, 11366.6, 11368, 11370.1, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, 11383, or 11550, or subdivision (a) of Section 11377, or any person who is discharged or paroled from a penal institution where he or she was confined because of the commission of any such offense, or any person who is convicted in any other state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses, shall within 30 days of his or her coming into any county or city, or city and county in which he or she resides or is temporarily domiciled for that length of time, register with the chief of police of the city in which he or she resides or the sheriff of the county if he or she resides in an unincorporated area.

For persons convicted of an offense defined in Section 11377, 11378, 11379, or 11380, this subdivision shall apply only to offenses involving controlled substances specified in paragraph (12) of subdivision (d) of Section 11054 and paragraph (2) of subdivision (d) of Section 11055, and to analogs of these substances, as defined in Section 11401. For persons convicted of an offense

defined in Section 11379 or 11379.5, this subdivision shall not apply if the conviction was for transporting, offering to transport, or attempting to transport a controlled substance.

(b) Any person who, is convicted in any federal court of any offense which, if committed or attempted in this state would have been punishable as one or more of the offenses enumerated in subdivision (a) shall within 30 days of his or her coming into any county or city, or city and county in which he or she resides or is temporarily domiciled for that length of time, register with the chief of police of the city in which he or she resides or the sheriff of the county if he or she resides in an unincorporated area.

(c) This section does not apply to a conviction of a misdemeanor under Section 11357 or 11360, or 11377.

(d) The registration requirements imposed by this section for the conviction of offenses defined in Section 11353.7, 11366.5, 11366.6, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, shall apply to any person who commits any of those offenses on and after January 1, 1990.

11591 SCHOOL EMPLOYEE; ARREST FOR CONTROLLED SUBSTANCE OFFENSE; NOTICE TO SCHOOL AUTHORITIES

Every sheriff or chief of police, upon the arrest for any of the controlled substance offenses enumerated in Section 11590, or Section 11364, insofar as that section relates to paragraph (12) of subdivision (d) of Section 11054, of any school employee, shall do either of the following:

(1) If such school employee is a teacher in any of the public schools of this state, he or she shall immediately notify by telephone the superintendent of schools of the school district employing such teacher and shall immediately give written notice of the arrest to the Commission for Teacher Preparation and Licensing and to the superintendent of schools in the county wherein such person is employed. Upon receipt of such notice, the county superintendent of schools shall immediately notify the governing board of the school district employing such person.

(2) If such school employee is a nonteacher in any of the public schools of this state, he or she shall immediately notify by telephone the superintendent of schools of the school district employing such nonteacher and shall immediately give written notice of the arrest to the governing board of the school district employing such person.

(3) If such school employee is a teacher in any private school of this state, he or she shall immediately notify by telephone the private school authority employing such teacher and shall immediately give written notice of the arrest to the private school authority employing such teacher.

CALIFORNIA CODE OF REGULATIONS**COMMITTEE OF CREDENTIALS****GENERAL PROVISIONS**

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80300. DEFINITIONS

(a) "Adverse action" is a denial, a private admonition, public reproof, suspension or a revocation of one or more credentials.

(b) "Aggravating factor" is an event or circumstance which demonstrates that a greater degree of adverse action for an act of professional misconduct is needed to adequately protect the public, schoolchildren or the profession. Aggravating factors may include, but are not limited to, the following:

- (1) a prior record of adverse action including the nature and extent of that record;
- (2) that the misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct;
- (3) that the misconduct was surrounded by or followed by bad faith, dishonesty or other violation of the laws governing educators;
- (4) that the misconduct significantly harmed a child entrusted to the care of a credential holder or applicant, significantly harmed the public or the educational system;
- (5) that the holder or applicant demonstrated indifference toward the consequence of the misconduct, which includes failure to comply with known court orders; or
- (6) that the holder or applicant had prior notice, warnings or reprimands for similar conduct from any reliable source.

(c) "Applicant" is an individual applying for a credential, permit, waiver or other certification document issued by the Commission on Teacher Credentialing.

(d) "Commission" is the Commission on Teacher Credentialing or a predecessor agency.

(e) "Committee" is the Committee of Credentials.

(f) "Confidential investigative report" is a summary of applicable law and relevant facts, as well as information regarding aggravating and mitigating factors, prepared and presented to the Committee pursuant to Education Code section 44242.5(c)(2).

(g) "Credential" is any credential, certificate, life document, life diploma, permit or other document which authorizes the holder to perform services which require certification and was issued by the Commission.

(h) "Complainant" is the person or persons filing a statement pursuant to Education Code section 44242.5(b)(2), or an employer filing a notice pursuant to Education Code section 44242.5(b)(3), or (4).

(i) "Denial" is refusal to grant a credential to an applicant whose conduct comes within the provisions of Education Code sections 44435 or 44346.

(j) "Employer" is the entity which contracts with or otherwise engages a holder or applicant for the performance of educational services.

(k) "Formal review" is the meeting or hearing held pursuant to Education Code section 44244.

(l) "Holder" is an individual possessing a credential, permit, waiver or other certification document issued by the Commission.

(m) "Mitigating factor" is an event or circumstance which demonstrates that the public, schoolchildren and the profession would be adequately protected by a more lenient degree of adverse action or no adverse action whatsoever. Mitigating factors may include, but are not limited to, the following factors:

(1) absence of any prior record of adverse action over many years of educational service, coupled with present misconduct which is not deemed most serious;

(2) lack of harm to the person who is the object of the misconduct;

(3) emotional or physical difficulties suffered by the holder or applicant which substantially contributed to the misconduct; provided that the difficulties were not the product of illegal conduct by the credential holder or applicant, such as illegal drug or substance abuse; and further provided that the credential holder or applicant has established through clear and convincing evidence that he or she no longer has such difficulties;

(4) a demonstration of good character of the applicant or holder attested to by references from the educational community or the general community from individuals aware of the extent of the applicant's or holder's misconduct;

(5) objective action taken by the applicant or holder, spontaneously demonstrating remorse at the time of the misconduct, and recognition of the wrongdoing which is designed to timely make amends for the consequences of the misconduct;

(6) the proximity or remoteness in time relative to the seriousness of the misconduct; or

(7) the nature and extent of subsequent rehabilitation.

(n) "Private admonition" is an adverse action defined and governed by Education Code section 44438.

(o) "Probable cause" is reasonable grounds for belief in the existence of facts warranting adverse action.

(p) "Public reproof" is a public warning from the Commission that conduct is not appropriate for a credential holder or applicant. Following a public reproof, commission of the same or similar misconduct may result in more serious adverse action. It is issued only when adequate to appropriately protect the public, schoolchildren and the profession.

(q) "Recurring conduct" is behavior involving the exercise of consistently poor judgment or misconduct.

(r) "Revocation" is the termination of an individual's ability to work in a position requiring certification. Once effective, the revocation continues

unless the individual is reinstated by the Commission.

(s) "Sexual misconduct" is:

- (1) acts or conduct, directed at a minor which a reasonable person would believe to be motivated by sexual interest;
- (2) acts or conduct defined in Education Code section 44010 whether or not the applicant or holder was convicted or arrested; or
- (3) the proliferation or distribution of child pornography or the exploitation of any minor through the use of any pornography by a credential holder or applicant. "Pornography" consists of the acts defined in Part 1, Title 9, Chapters 7.5 and 7.6 of the Penal Code, commencing with section 311.

(t) "Suspension" is the temporary inactivation of a credential for a specified period of time. A suspension may be stayed on conditions of probation or may be an actual suspension or may be both. If an actual suspension, the credential holder may not work in a position requiring a credential during the period of actual suspension.

(1) A "stayed suspension" may be issued for a specified period of time only if the stay and performance of specified rehabilitative or probationary duties by the credential holder during the period of the stay is deemed consistent with the purposes of professional discipline.

(2) An "actual suspension" may be issued for a specified period of time. Actual suspensions imposed for one year or longer shall require presentation of sufficient proof to the Commission of the credential holder's rehabilitation, or present fitness to perform the duties authorized by the credential before the suspension may terminate.

80301 NOTICE TO APPLICANTS FOR ISSUANCE OR RENEWAL OF CREDENTIALS; APPLICATION FOR CHARACTER AND IDENTIFICATION CLEARANCE

(a) An applicant for issuance or renewal of a credential shall not be required to disclose, and the Committee of Credentials shall not inquire into or consider, any acts or omissions not related to his or her fitness or competence to perform the duties authorized by his or her credential.

(b) Each applicant for initial issuance of a credential shall submit a completed Application for Character and Identification Clearance on a form adopted by the Commission on which he or she will set forth evidence of identification and good moral character which shall be used for the sole purpose of determining the applicant's eligibility for a credential or Certificate of Clearance.

(c) The Application for Character and Identification Clearance shall include, but not be limited to, the following information for applicants:

- (1) that the Commission is prohibited from issuing to or renewing the

credential of any person convicted of any sex offense listed under Education Code Section 44010; or any narcotics offense listed under Education Code Section 44011; or who has been determined to be a mentally disordered sex offender; or that if a person holds a credential and has been convicted of any offense listed in Education Code Section 44424, such credential must be revoked.

80302 STANDARDS FOR INVESTIGATION

(a) The Committee, in conducting its investigation, shall determine the relationship between the alleged misconduct and the applicant's or holder's fitness, competence, or ability to effectively perform the duties authorized by the credential. Such relationship may be based on facts which include, but are not limited to, the following:

- (1) The likelihood that the conduct may have adversely affected students, fellow teachers, or the educational community, and the degree of such adversity anticipated;
- (2) The proximity or remoteness in time of the conduct;
- (3) The type of credential held or applied for by the person involved;
- (4) The extenuating or aggravating circumstances surrounding the conduct;
- (5) The praiseworthiness or blameworthiness of the motives resulting in the conduct;
- (6) The likelihood of the recurrence of the questioned conduct;
- (7) The extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the person involved, or other certified persons;
- (8) The publicity or notoriety given to the conduct.

(b) If the Committee finds no relationship between the alleged misconduct and the applicant's or holder's fitness, competence or ability to effectively perform the duties authorized by the credential the Committee shall close the investigation.

80303 REPORTS OF CHANGE IN EMPLOYMENT STATUS

(a) Whenever a credential holder, working in a position requiring a credential:

- (1) is dismissed;
 - (2) resigns;
 - (3) is suspended for more than 10 days;
 - (4) retires; or
 - (5) is otherwise terminated by a decision not to employ or re-employ;
- as a result of an allegation of misconduct, the holder and the superintendent of the employing school district shall each report such change in employment

status to the Commission within 30 days.

(b) The report shall contain all known information about each alleged act of misconduct.

(c) The report shall be made to the Commission regardless of any proposed or actual agreement, settlement, or stipulation not to make such a report. Such report shall also be made if allegations served on the holder are withdrawn in consideration of the holder's resignation, retirement, or other failure to contest the truth of the allegations.

(d) Failure to make a report required under this section constitutes unprofessional conduct. The Committee shall investigate any holder or superintendent who holds a credential who fails to file reports required by this section.

(e) The superintendent of an employing school district shall, in writing, inform a credential holder of the content of this regulation whenever that credential holder, working in a position requiring a credential, is dismissed, resigns, is suspended for more than ten days, retires or is otherwise terminated by a decision not to employ or re-employ as a result of an allegation of misconduct. Failure to comply with this subdivision by a superintendent of schools constitutes unprofessional conduct which shall be investigated by the Committee of Credentials.

NOTE: Pursuant to court order, to the extent section 80303 requires a credential holder, working in a position requiring a credential, to report a change in employment status to the Commission, the regulation is void and may not be enforced and to the extent section 80303 declares that failure to report a change in the employment status to the Commission of any holder of a credential shall constitute unprofessional conduct, and to the extent the Commission or its Committee of Credentials is authorized to investigate a holder for failing to report such a change in employment status, the regulation is void and may not be enforced.

80304 NOTICE OF SEXUAL MISCONDUCT

(a) A notice filed pursuant to Education Code section 44242.5(b)(4) alleging sexual misconduct shall contain all of the following information:

- (1) name of the holder alleged to have engaged in misconduct;
- (2) name, age and address of each victim of the alleged misconduct;
- (3) a summary of all information known to the employer regarding the alleged misconduct; and
- (4) a summary of the action, if any, taken at the district level by the employer in response to the complaint of sexual misconduct.

80306 TIME FOR PRESENTATION OF ALLEGATIONS

(a) With the exceptions set forth in Education Code section 44242.7(a), an allegation of an act or omission by a credential holder shall be presented to the Committee within four years from the date of the alleged act or omission, or within one year from the date the act or omission should reasonably have

been discovered by the Commission.

(b) For purposes of Education Code section 44242.7(a), a matter is presented to the Committee when the credential holder or applicant is notified that the matter is set for initial review by the Committee.

80307 DISCOVERY

(a) All writings as defined by California Evidence Code section 250 which are included in the applicant's or holder's file including writings which form the basis for the allegations, with the exception of privileged information, shall be subject to discovery by the applicant or holder following commencement of an investigation.

(b) The fee for providing discovery is \$.10 per page for photocopies, \$.50 per page for copies from microfilm, the actual cost of postage, and the actual cost of staff time at the hourly rate of a program technician.

(c) Credential holders or applicants being investigated shall be notified of the availability and cost of discovery upon notice of initial review from the Commission. Upon receipt of a written request for discovery, Commission staff shall, within five working days, notify the requester of the fee for discovery. This fee shall be paid prior to the release of the documents subject to discovery.

80307.1 INVESTIGATION COMMENCES

An investigation is commenced on the date respondent is first notified, in writing, that his or her fitness to hold a credential is under initial review.

80308 PRELIMINARY REVIEW

(a) If the Committee receives information about an applicant or holder, the Committee may conduct a preliminary review of the information prior to commencing an investigation. At the preliminary review, the Committee may either determine to end the review or instruct staff to set the matter for initial review at a later meeting.

(b) A credential holder's personnel records shall not be obtained without written notification to the holder.

(c) No contact shall be made by any Commission staff members with anyone except the complainant prior to opening the investigation.

NOTE: Pursuant to court order, the Commission has jurisdiction to conduct an investigation, including requests for information to public agencies, only upon receipt of relevant information as specified within and pursuant to Education Code section 44242.5. Unless the Commission receives such information as specified in section 44242.5, it may not proceed to investigate, including the undertaking of a preliminary review pursuant to section 80308.

80309 MEDICAL AND PSYCHIATRIC GUIDELINES

(a) The Committee shall not initiate an administrative hearing solely on the grounds that an applicant or licensee is suffering from a contagious and communicable disease or other disease or defect of mind or body unless

probable cause appears from the evidence that:

(1) The condition of the applicant or licensee constitutes a health hazard to students or persons with who he or she must associate in carrying out the duties authorized by the credential applied for or held; or

(2) Because of the said disease or defect the applicant or licensee is unable to perform the duties authorized by the credential applied for or held.

(b) Any denial, suspension, or revocation of a credential pursuant to this section shall be limited in duration to the period of actual disability; and the credential shall be granted or reissued upon presentation of satisfactory evidence that such disability no longer exists.

(c) Where it appears from the evidence that an applicant or licensee is or has been within one year, under psychiatric treatment as a condition of probation imposed by a court as a result of the commission of acts or omissions which also constitute probable cause for private admonition, denial, suspension, or revocation of a credential; or where the evidence shows that an applicant or licensee has committed acts or omissions which, but for the reasonably probable existence of some mental defect or disability, would constitute cause for disciplinary action, the Committee of Credentials may require and the applicant or licensee shall submit to an examination by a designated board certified licensed psychiatrist who shall prepare his expert opinion with respect to whether the applicant or licensee is able to perform the duties authorized by the credential applied for or held; and if not so able, the probable duration and severity of the disability. Such examination shall be at the expense of the Commission.

Refusal or willful failure of an applicant or licensee to submit to such examination within 30 days after service of such request by registered mail shall constitute cause for denial of the application for issuance or renewal of a credential, and any revocation or suspension of a credential shall be limited by the provisions of subsection 2(b) above.

80309.1 INITIAL REVIEW

(a) Prior to issuance of a notice of meeting pursuant to section 80310 the Committee shall conduct an initial review of the matter based upon written information.

(b) Notification of the initial review shall be provided to the holder or applicant only.

(c) When the matter is set for initial review by the Committee the staff shall provide written notification to the applicant or holder and offer the applicant or holder a reasonable opportunity to provide written information to the Committee prior to the Committee meeting. All written statements by the applicant or holder provided to the Committee shall be verified under penalty of perjury.

(d) Staff shall submit a confidential investigative report to the Committee.

80310 NOTICE OF MEETING, FORMAL REVIEW

(a) The notice of meeting required by Education Code section 44244(a), for the meeting also known as formal review, shall be sent to the holder or applicant

by certified mail, return receipt requested. The notice shall be sent to the address of record and/or the last known address of the holder or applicant. The notice to the holder or applicant shall contain a confidential investigative report.

(b) The notice shall be sent to any complainant and known employer, or last known employer and to the university or college which submitted a pending application for certificate of clearance.

80311 REQUEST FOR APPEARANCE

(a) No later than 20 days prior to formal review before the Committee pursuant to section 80310, the holder or applicant may request an opportunity to personally appear before the Committee during the formal review to respond, under oath, to questions from the Committee.

(b) Upon receipt of a request for an appearance, staff shall schedule a specific day and time to appear before the Committee during the formal review. Staff shall also notify all complainants and the last known employer, of the scheduled appearance. This notice shall state that the complainant and/or employer may also appear to offer relevant testimony before the Committee.

(c) If the holder or applicant is unable to appear before the Committee at the scheduled time, the Committee shall conduct the meeting, as noticed pursuant to section 80310, without an appearance. The Committee may grant a continuance if an emergency situation exists.

80312 CONTINUANCE

A matter set for review by the Committee may be continued only upon written request and in compelling and verifiable situations. As part of the written request for a continuance the respondent must submit a written waiver of time and a showing that there will be no harm to the public in the event the continuance is granted. A request for a continuance must be received at the Commission no later than 10 days prior to the date set for review by the Committee.

80313 PRESENCE OF MATERIAL WITNESSES

(a) Any person determined by the Committee of Credentials to be a material witness in a particular case shall be permitted to be present to provide testimony during formal review by the Committee and shall be examined for rebuttal evidence, if any.

(b) Whether a witness is called shall be at the sole discretion of the Committee of Credentials.

(c) The order of witness testimony shall be determined by the Committee of Credentials.

(d) A minor witness (persons under 18 years of age) may have one support person present during their testimony. No support person will be allowed for adult witnesses, except the representative designated by the applicant or holder under investigation.

80314 ACTION

A quorum of the Committee must be present to consider any action, and at least four members must concur to take any action.

80314.5 NOTICE OF COMMITTEE ACTION

A written copy of the recommendation and findings of the Committee together with a notice of appeal rights available shall be sent by registered mail to the holder's or applicant's last known address within 14 days after the meeting or hearing at which the recommendation is made. Unless the recommendation involves private admonition, as provided in Section 44438 of the Education Code, a copy of the said recommendation, but not the findings unless otherwise provided by law, shall be mailed to all complainants and parties requesting notice of the Committee's decision in the case. Such recommendation, but not the findings, unless otherwise provided by law, shall also be made available to members of the public upon request.

80315 RECONSIDERATION

(a) A holder, applicant, complainant or employer may request, in writing, that the Committee reconsider its recommended decision. The request must be received by the Commission no later than 30 days after personal service or mailing notice of the Committee's recommendation. The request for reconsideration shall also contain new and different evidence which may materially affect the findings of the Committee.

(b) When a recommendation of the Committee is presented to the Commission pursuant to Education Code section 44244.1, the Commission may adopt the recommendation or request the Committee to reconsider its action, decision, or recommendation. Upon request of the Commission, the Committee shall reconsider its action, decision, or recommendation.

(c) A member of the Committee may participate in the reconsideration of a matter even though he or she was not present during the original consideration of the matter if the interested parties agree, or if the member reviews a transcript or tape recording of the proceedings and all other documents and evidentiary materials before the Committee.

80316.5 CONFIDENTIAL REPORT OF INVESTIGATION

Where the confidential investigative report shows that the allegations are groundless the file shall be sealed.

80317 ADMINISTRATIVE HEARING

The credential holder or applicant may, within thirty (30) days after personal service or the mailing of notice of the Committee's recommendation, request an administrative hearing by giving written notice to the Commission. The administrative hearing is a trial de novo. Any prayer contained in an Accusation or Statement of Issues shall request "appropriate adverse action according to evidence."

80320 CONSENT DETERMINATIONS

At any time after the Committee has determined that a Statement of Issues or an Accusation shall be filed against a respondent, but before a final determination of the matter has been made by the Commission, the respondent may propose and the Committee may recommend to the Commission a settlement upon terms which sufficiently provide for the protection of the public, schoolchildren and the profession.

CHAPTER 3 OF PART VIII OF TITLE 5 CCR
(effective February 3, 1989)

80331 RULES OF CONDUCT FOR PROFESSIONAL EDUCATORS

(a) These rules are binding upon every person holding a credential or any license to perform educational services under the jurisdiction of the Commission on Teacher Credentialing, and the consequences of any willful breach may be revocation or suspension of the credential, or license, or private admonition of the holder.

(b) Nothing in these rules is intended to limit or supersede any provision of law relating to the duties and obligations of certificated persons or to the consequences of the violation of such duties and obligations. The prohibition of certain conduct in these rules is not to be interpreted as approval of conduct not specifically cited.

(c) These rules may be cited and referred to as "Rules of Conduct for Professional Educators."

(d) The Commission shall complete a study of the effect of these rules and present its findings to the Governor, the Legislature, and the State Board of Education no later than September 1, 1989.

(e) As used in these rules:

(1) "**Certificated person**" means any person who holds a certificate, permit, credential, or other license authorizing the performance of teaching or education-related service in grades K through 12 in California public schools.

(2) "**Professional employment**" means the performance for compensation of teaching or other education-related employment in a position for which certification requirements are set by law.

(3) "**Confidential information**" means information which was provided to the certificated person solely for the purpose of facilitating his/her performance of professional services for or on behalf of the person or employer providing such information.

80332 PROFESSIONAL CANDOR AND HONESTY IN LETTERS OR MEMORANDA OF EMPLOYMENT RECOMMENDATION

(a) A certificated person shall not write or sign any letter or memorandum which intentionally omits significant facts, or which states as facts matters which the writer does not know of his/her own knowledge to be true relating to the professional qualifications or personal fitness to perform certificated

services of any person whom the writer knows will use the letter or memorandum to obtain professional employment nor shall he/she agree to provide a positive letter of recommendation which misrepresents facts as a condition of resignation or for withdrawing action against the employing agency.

(b) This rule has no application to statements identified in the letter or memorandum as personal opinions of the writer but does apply to unqualified statements as fact which the writer does not know to be true or to statements as fact which the writer knows to be untrue.

80333 WITHDRAWAL FROM PROFESSIONAL EMPLOYMENT

(a) A certificated person shall not abandon professional employment without good cause.

(b) "Good cause" includes but is not necessarily limited to circumstances not caused by or under the voluntary control of the certificated person.

80334 UNAUTHORIZED PRIVATE GAIN OR ADVANTAGE

A certificated person shall not:

(a) Use for his/her own private gain or advantage or to prejudice the rights or benefits of another person any confidential information relating to students or fellow professionals;

(b) Use for his/her own private gain or advantage the time, facilities, equipment, or supplies which is the property of his/her employer without the express or clearly implied permission of his/her employer;

(c) Accept any compensation or benefit or thing of value other than his/her regular compensation for the performance of any service which he/she is required to render in the course and scope of his/her certificated employment. This rule shall not restrict performance of any overtime or supplemental services at the request of the school employer; nor shall it apply to or restrict the acceptance of gifts or tokens of minimal value offered and accepted openly from students, parents or other persons in recognition or appreciation of service.

80335 PERFORMANCE OF UNAUTHORIZED PROFESSIONAL SERVICES

A certificated person shall not, after July 1, 1989:

(a) Knowingly, accept an assignment to perform professional services if he or she does not possess a credential authorizing the service to be performed; unless he or she has first exhausted any existing local remedies to correct the situation, has then notified the county superintendent of schools in writing of the incorrect assignment, and the county superintendent of schools has made a determination, within 45 days of receipt of the notification, that the assignment was caused by extraordinary circumstances which make correction impossible, pursuant to the procedures referred to in Education Code Section 44258.9(g)(2) and (3).

(b) Knowingly and willfully assign or require a subordinate certificated person to perform any professional service which the subordinate is not authorized to perform by his or her credential or which is not approved by

appropriate governing board authorization, unless he or she has made reasonable attempts to correct the situation but has been unsuccessful, and has notified the county superintendent of schools of those attempts, and the county superintendent of schools has determined, within 45 days of being notified of the assignment, that the assignment was caused by extraordinary circumstances which make correction impossible.

(c) Neither (a) nor (b) shall be applicable in a situation where extraordinary circumstances make the correction of the misassignment impossible.

(d) There shall be no adverse action taken against a certificated person under this rule for actions attributable to circumstances beyond his or her control.

(e) Effective October 20, 1993, no adverse action described in Title 5, California Code of Regulations, section 80331(a) shall be imposed for violation of this provision prior to review and attempted disposition pursuant to Title 5, California Code of Regulations, section 80339 through 80339.6.

80336 PERFORMANCE WITH IMPAIRED FACULTIES

(a) A certificated person shall not:

(1) Perform or attempt to perform any duties or services authorized by his or her credential during any period in which he or she knows or is in possession of facts showing that his or her mental or intellectual faculties are substantially impaired for any reason, including but not limited to use of alcohol or any controlled substance.

(2) Assign or require or permit a subordinate certificated person to perform any duties authorized by his or her credential during any period in which the superior certificated person knows of his or her own knowledge or is in possession of facts showing that the subordinate certificated person's mental or intellectual faculties are substantially impaired for any reason, including but not limited to use of alcohol or any controlled substance.

(b) For the purpose of this rule, substantial impairment means a visible inability to perform the usual and customary duties of the position in a manner that does not represent a danger to pupils, employees, or school property. It does not include or mean inability attributable to lack of, or inadequate, professional preparation or education.

80337 HARASSMENT AND RETALIATION PROHIBITED

No certificated person shall directly or indirectly use or threaten to use any official authority or influence in any manner whatsoever which tends to discourage, restrain, interfere with, coerce, or discriminate against any subordinate or any certificated person who in good faith reports, discloses, divulges, or otherwise brings to the attention of the governing board of a school district, the Commission on Teacher Credentialing or any other public agency authorized to take remedial action, any facts or information relative to actual or suspected violation of any law regulating the duties of persons serving in the public school system, including but not limited to these rules of professional conduct.

80338 DISCRIMINATION PROHIBITED

A certificated person shall not, without good cause, in the course and scope of his or her certificated employment and solely because of race, color, creed, gender, national origin, handicapping condition or sexual orientation, refuse or fail to perform certificated services for any person.

80412 FILING OF MAILING ADDRESS

(a) Every person applying for, holding, or to whom is issued, a credential, shall file with the Commission his or her present mailing address and shall notify the Commission of any change therein.

(b) Such filing of address and notice of change therein shall be made in writing and delivered, or forwarded by mail, postage prepaid, to the Commission at the office of the Commission on Teacher Credentialing, 1900 Capitol Avenue, Sacramento, CA 95814-4213.

CREDENTIAL TYPES, AUTHORIZATIONS AND REQUIREMENTS**80028 Certificate of Clearance****80028 CERTIFICATE OF CLEARANCE**

A Certificate of Clearance is a document, issued by the Commission, which verifies that the holder meets personal and health qualifications necessary to obtain a regular California teaching or services credential.

(a) Each candidate for an initial credential shall, prior to admission to student teaching under any professional preparation program approved by the Commission, obtain a Certificate of Clearance in accordance with (1) or (2) below.

(1) No less than 60 working days prior to admission to student teaching, the candidate shall submit the following materials to the Commission:

(A) Completed application form.

(B) One-half of the credential issuance/reissuance or renewal fee specified in Section 80487(a)(1), unless otherwise established by law. The fee shall apply toward the initial credential if the Certificate of Clearance accompanies the credential application.

(C) Duplicate personal identification cards as specified in Section 80442 including appropriate fees specified in Section 80487(a)(6) and 80487(a)(7) or by law.

The Certificate of Clearance shall be issued when the Commission has verified the candidate's personal and health status.

(2) At any time prior to admission to student teaching, the candidate shall submit the following materials to the dean/director of teacher education or the chief campus officer of the institution of higher education at which such admission is sought:

(A) All materials as specified in (A), (B) and (C) of subsection (a)(1) of

this section.

(B) An affidavit attesting to the identification and personal and health qualifications of the candidate, completed and signed, under penalty of perjury, by the candidate.

The dean/director of teacher education or chief campus officer of the institution shall complete and sign, under penalty of perjury, an affidavit stating as follows: "I am the dean/director of teacher education or the chief campus officer at the above institution of higher education. I have personally examined the identification documents of this applicant and know that he/she is in fact the person he/she represents himself/herself to be. I have personally interviewed the candidate and explained to him/her the very serious consequences of any concealment or falsification of his/her identity or fitness. I hereby certify under penalty of perjury that the foregoing is true and correct."

The dean/director of teacher education or chief campus officer of the institution shall forward all materials to the Commission and will retain copies of all materials submitted. Copies of these materials shall serve in lieu of actual issuance of the Certificate of Clearance and shall authorize admission to student teaching.

The Certificate of Clearance shall be issued when the Commission has verified the candidate's personal and health status.

(b) Each potential candidate for an initial credential may, prior to admission to any professional preparation program approved by the Commission, obtain a Certificate of Clearance.

Application for the Certificate of Clearance shall be submitted to the Commission and shall include all materials specified in (A), (B), and (C) of subsection (a)(1) of this section.

The Certificate of Clearance shall be issued when the Commission has verified the potential candidate's personal and health status.

Except as provided in Subsection (a), institutions and local education agencies should not construe this as an authorization or direction to require this clearance of all students.

ADMINISTRATIVE PROCEDURE ACT

The California Administrative Procedure Act is found in Government Code Sections 11340 through 11529. This legislation is the result of years of effort by many individuals and groups and embodies the work of several sessions of the Legislature. The act is divided into three chapters: Chapter 3.5-dealing with rules and regulations which state agencies adopt, Chapter 4-dealing with the general organization and functions of the Office of Administrative Hearing, formerly the Office of Administrative Procedure, and Chapter 5-dealing with administrative adjudication or quasi-judicial hearings conducted by specific state agencies. Chapters 4 and 5 are set forth in the following pages.

Chapter 3.5 requires that agencies adopting rules and regulations give advance notice to the public. It provides specially for cases of emergency. It also provides for the central filing and publication of such rules and regulations. For further information, contact the Office of Administrative Law (see Government Code Section 11340.2).

The procedure outlined for adjudicatory hearings in Chapter 5 is designed to afford a fair hearing before an impartial and qualified tribunal. While certain sections indicate the course that hearings should follow and certain guides are established to determine what may be considered by the agencies, the procedure is more liberal and less restrictive than proceedings before courts of law.

Independent hearing officers, called Administrative Law Judges, are made available to state agencies. This procedure is designed to insure that the person hearing the matter is impartial. Provision is made for judicial review of decisions rendered under the act.

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11400 ADMINISTRATIVE ADJUDICATION PROVISIONS; REFERENCES TO PRIOR LAW

(a) This chapter and Chapter 5 (commencing with Section 11500) constitute the administrative adjudication provisions of the Administrative Procedure Act.

(b) A reference in any other statute or in a rule of court, executive order, or regulation, to a provision formerly found in Chapter 5 (commencing with Section 11500) that is superseded by a provision of this chapter, means the applicable provision of this chapter.

11400.10 OPERATIVE DATE AND APPLICATION OF CHAPTER

(a) This chapter is operative on July 1, 1997.

(b) This chapter is applicable to an adjudicative proceeding commenced on or after July 1, 1997.

(c) This chapter is not applicable to an adjudicative proceeding commenced before July 1, 1997, except an adjudicative proceeding conducted on a remand from a court or another agency on or after July 1, 1997.

11400.20 REGULATIONS

(a) Before, on, or after July 1, 1997, an agency may adopt interim or permanent regulations to govern an adjudicative proceeding under this chapter or Chapter 5 (commencing with section 11500). Nothing in this section authorizes an agency to adopt regulations to govern an adjudicative proceeding required to be conducted by an administrative law judge employed by the office of administrative hearings, except to the extent the regulations are otherwise authorized by statute.

(b) Except as provided in Section 11351:

(1) Interim regulations need not comply with Article 5 (commencing with Section 11346) or Article 6 (commencing with Section 11349) of Chapter 3.5, but are governed by Chapter 3.5 (commencing with Section 11340) in all other respects.

(2) Interim regulations expire on December 31, 1998, unless earlier terminated or replaced by or readopted as permanent regulations under paragraph (3). If on December 31, 1998, an agency has completed proceedings to replace or readopt interim regulations and has submitted permanent regulations for review by the Office of Administrative Law, but permanent regulations have not yet been filed with the Secretary of State, the interim regulations are extended until the date permanent regulations are filed with the Secretary of State or March 31, 1999, whichever is earlier.

(3) Permanent regulations are subject to all the provisions of Chapter 3.5 (commencing with Section 11340), except that if by December 31, 1998, an agency has submitted the regulations for review by the Office of Administrative Law, the regulations are not subject to review for necessity under Section 11349.1 or 11350.

11405.10 CONSTRUCTION OF CHAPTER

Unless the provision or context requires otherwise, the definitions in this article govern the construction of this chapter.

11405.20 ADJUDICATIVE PROCEEDING

"Adjudicative proceeding" means an evidentiary hearing for determination of facts pursuant to which an agency formulates and issues a decision.

11405.30 AGENCY

"Agency" means a board, bureau, commission, department, division, office, officer, or other administrative unit, including the agency head, and one or more members of the agency head or agency employees or other persons directly or indirectly purporting to act on behalf of or under the authority of the agency head. To the extent it purports to exercise authority pursuant to this chapter, an administrative unit otherwise qualifying as an agency shall be treated as a separate agency even if the unit is located within or subordinate to another agency.

11405.40 AGENCY HEAD

"Agency head" means a person or body in which the ultimate legal authority of an agency is vested, and includes a person or body to which the power to act is delegated pursuant to authority to delegate the agency's power to hear and decide.

11405.50 DECISION

(a) "Decision" means an agency action of specific application that determines a legal right, duty, privilege, immunity, or other legal interest of a particular person.

(b) Nothing in this section limits any of the following:

(1) The precedential effect of a decision under Section 11425.60.

(2) The authority of an agency to make a declaratory decision pursuant to Article 14 (commencing with Section 11465.10)

11405.60 PARTY

"Party" includes the agency that is taking action, the person to which the agency action is directed, and any other person named as a party or allowed to appear or intervene in the proceeding. If the agency that is taking action and the agency that is conducting the adjudicative proceeding are separate agencies, the agency that is taking action is a party and the agency that is conducting the adjudicative proceeding is not a party.

11405.70 PERSON

"Person" includes an individual, partnership, corporation, governmental subdivision or unit of a governmental subdivision, or public or private organization or entity of any character.

11405.80 PRESIDING OFFICER

"Presiding officer" means the agency head, member of the agency head, administrative law judge, hearing officer, or other person who presides in an adjudicative proceeding.

11410.10 EVIDENTIARY HEARING REQUIRED

This chapter applies to a decision by an agency if, under the federal or state Constitution or a federal or state statute, an evidentiary hearing for determination of facts is required for formulation and issuance of the decision.

11410.20 AGENCIES; LEGISLATIVE, JUDICIAL AND EXECUTIVE BRANCHES

Except as otherwise expressly provided by statute:

- (a) This chapter applies to all agencies of the state.
- (b) This chapter does not apply to the Legislature, the courts or judicial branch, or the Governor or office of the Governor.

11410.30 LOCAL AGENCIES

- (a) As used in this section, "local agency" means a county, city, district, public authority, public agency, or other political subdivision or public corporation in the state other than the state.
- (b) This chapter does not apply to a local agency except to the extent the provisions are made applicable by statute.
- (c) This chapter applies to an agency created or appointed by joint or concerted action of the state and one or more local agencies.

11410.40 ADOPTION BY EXEMPT AGENCY

Notwithstanding any other provision of this article, by regulation, ordinance, or other appropriate action, an agency may adopt this chapter or any of its provisions for the formulation and issuance of a decision, even though the agency or decision is exempt from application of this chapter.

11410.50 ADJUDICATIVE PROCEEDING UNDER CHAPTER 5

This chapter applies to an adjudicative proceeding required to be conducted under Chapter 5 (commencing with Section 11500) unless the statutes relating to the proceeding provide otherwise.

11415.10 STATUTES AND REGULATIONS; ADMINISTRATIVE PROCEDURE ACT

(a) The governing procedure by which an agency conducts an adjudicative proceeding is determined by the statutes and regulations applicable to that proceeding. If no other governing procedure is provided by statute or regulation, an agency may conduct an adjudicative proceeding under the administrative adjudication provisions of the Administrative Procedure Act.

(b) This chapter supplements the governing procedure by which an agency conducts an adjudicative proceeding.

11415.20 CONTROLLING LAW

A state statute or a federal statute or regulation applicable to a particular agency or decision prevails over a conflicting or inconsistent provision of this chapter.

11415.30 EXECUTIVE ORDERS; AUTHORIZED ACTIONS

(a) To the extent necessary to avoid a loss or delay of funds or services from the federal government that would otherwise be available to the state, the Governor may do any of the following by executive order:

(1) Suspend, in whole or in part, any administrative adjudication provision of the Administrative Procedure Act.

(2) Adopt a rule of procedure that will avoid the loss or delay.

(b) The Governor shall rescind an executive order issued under this section as soon as it is no longer necessary to prevent the loss or delay of funds or services from the federal government.

(c) If an administrative adjudication provision is suspended or rule of procedure is adopted pursuant to this section, the Governor shall promptly report the suspension or adoption to the Legislature. The report shall include recommendations concerning any legislation that may be necessary to conform the provision to federal law.

11415.40 WAIVER OF RIGHTS

Except to the extent prohibited by another statute or regulation, a person may waive a right conferred on the person by the administrative adjudication provisions of the Administrative Procedure Act.

11415.50 PROCEDURE WHERE ADJUDICATIVE PROCEEDING NOT REQUIRED; INFORMAL INVESTIGATION

(a) An agency may provide any appropriate procedure for a decision for which an adjudicative proceeding is not required.

(b) An adjudicative proceeding is not required for informal factfinding or an informal investigatory hearing, or a decision to initiate or not to initiate an investigation, prosecution, or other proceeding before the agency, another

agency, or a court, whether in response to an application for an agency decision or otherwise.

11415.60 DECISION BY SETTLEMENT

(a) An agency may formulate and issue a decision by settlement, pursuant to an agreement of the parties, without conducting an adjudicative proceeding. Subject to subdivision (c), the settlement may be on any terms the parties determine are appropriate. Notwithstanding any other provision of law, no evidence of an offer of compromise or settlement made in settlement negotiations is admissible in an adjudicative proceeding or civil action, whether as affirmative evidence, by way of impeachment, or for any other purpose, and no evidence of conduct or statements made in settlement negotiations is admissible to prove liability for any loss or damage except to the extent provided in section 1152 of the Evidence Code. Nothing in this subdivision makes inadmissible any public document created by a public agency.

(b) A settlement may be made before or after issuance of an agency pleading, except that in an adjudicative proceeding to determine whether an occupational license should be revoked, suspended, limited, or conditioned, a settlement may not be made before issuance of the agency pleading. A settlement may be made before, during or after the hearing.

(c) A settlement is subject to any necessary agency approval. An agency head may delegate the power to approve a settlement. The terms of a settlement may not be contrary to statute or regulation, except that the settlement may include sanctions the agency would otherwise lack power to impose.

11420.10 REFERRAL OF PROCEEDINGS

(a) An agency, with the consent of all the parties, may refer a dispute that is the subject of an adjudicative proceeding for resolution by any of the following means:

(1) Mediation by a neutral mediator.

(2) Binding arbitration by a neutral arbitrator. An award in a binding arbitration is subject to judicial review in the manner provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure.

(3) Nonbinding arbitration by a neutral arbitrator. The arbitrator's decision in a nonbinding arbitration is final unless within 30 days after the arbitrator delivers the award to the agency head a party requests that the agency conduct a de novo adjudicative proceeding. If the decision in the de novo proceeding is not more favorable to the party electing the de novo proceeding, the party shall pay the costs and fees specified in Section 1141.21 of the Code of Civil Procedure insofar as applicable in the adjudicative proceeding.

(b) If another statute requires mediation or arbitration in an adjudicative proceeding, that statute prevails over this section.

(c) This section does not apply in an adjudicative proceeding to the extent an agency by regulation provides that this section is not applicable in a proceeding of the agency.

11420.20 MODEL REGULATIONS; CONTENTS

(a) The Office of Administrative Hearings shall adopt and promulgate model regulations for alternative dispute resolution under this article. The model regulations govern alternative dispute resolution by an agency under this article, except to the extent the agency by regulation provides inconsistent rules or provides that the model regulations are not applicable in a proceeding of the agency.

(b) The model regulations shall include provisions for selection and compensation of a mediator or arbitrator, qualifications of a mediator or arbitrator, and confidentiality of the mediation or arbitration proceeding.

11420.30 CONFIDENTIALITY OF COMMUNICATIONS

Notwithstanding any other provision of law, a communication made in alternative dispute resolution under this article is protected to the following extent:

(a) Anything said, any admission made, and any document prepared in the course of, or pursuant to, mediation under this article is a confidential communication, and a party to the mediation has a privilege to refuse to disclose and to prevent another from disclosing the communication, whether in an adjudicative proceeding, civil action, or other proceeding. This subdivision does not limit the admissibility of evidence if all parties to the proceedings consent.

(b) No reference to nonbinding arbitration proceedings, a decision of the arbitrator that is rejected by a party's request for a de novo adjudicative proceeding, the evidence produced, or any other aspect of the arbitration may be made in an adjudicative proceeding or civil action, whether as affirmative evidence, by way of impeachment, or for any other purpose.

(c) No mediator or arbitrator is competent to testify in a subsequent administrative or civil proceeding as to any statement, conduct, decision, or order occurring at, or in conjunction with, the alternative dispute resolution.

(d) Evidence otherwise admissible outside of alternative dispute resolution under this article is not inadmissible or protected from disclosure solely by reason of its introduction or use in alternative dispute resolution under this article.

11425.10 GOVERNING PROCEDURES; REQUIREMENTS

(a) The governing procedure by which an agency conducts an adjudicative proceeding is subject to all of the following requirements:

(1) The agency shall give the person to which the agency action is directed notice and an opportunity to be heard, including the opportunity to present and rebut evidence.

(2) The agency shall make available to the person to which the agency action is directed a copy of the governing procedure, including a statement whether Chapter 5 (commencing with Section 11500) is applicable to the proceeding.

(3) The hearing shall be open to public observation as provided in Section 11425.20.

(4) The adjudicative function shall be separated from the investigative, prosecutorial, and advocacy functions within the agency as provided in Section 11425.30.

(5) The presiding officer is subject to disqualification for bias, prejudice, or interest as provided in Section 11425.50.

(6) The decision shall be in writing, be based on the record, and include a statement of the factual and legal basis of the decision as provided in Section 11425.50.

(7) A decision may not be relied on as precedent unless the agency designates and indexes the decision as precedent as provided in Section 11425.60.

(8) Ex parte communications shall be restricted as provided in Article 7 (commencing with Section 11430.10).

(9) Language assistance shall be made available as provided in Article 8 (commencing with Section 11435.05) by an agency described in Section 11018 or 11435.15.

(b) The requirements of this section apply to the governing procedure by which an agency conducts an adjudicative proceeding without further action by the agency, and prevail over a conflicting or inconsistent provision of the governing procedure, subject to Section 11415.20. The governing procedure by which an agency conducts an adjudicative proceeding may include provisions equivalent to, or more protective of the rights of the person to which the agency action is directed than, the requirements of this section.

11425.20 OPEN HEARINGS; EXCEPTIONS

(a) A hearing shall be open to public observation. Nothing in this subdivision limits the authority of the presiding officer to order closure of a hearing or make other protective orders to the extent necessary or proper for any of the following:

(1) To satisfy the United States Constitution, the California Constitution, federal or state statute, or other law, including but not limited to laws protecting privileged, confidential, or other protected information.

(2) To ensure a fair hearing in the circumstances of the particular case.

(3) To conduct the hearing, including the manner of examining witnesses, in a way that is appropriate to protect a minor witness or a witness with a developmental disability, as defined in Section 4512 of the Welfare and

Institutions Code, from intimidation or other harm, taking into account the rights of all persons.

(b) To the extent a hearing is conducted by telephone, television, or other electronic means, subdivision (a) is satisfied if members of the public have an opportunity to do both of the following:

(1) At reasonable times, hear or inspect the agency's record, and inspect any transcript obtained by the agency.

(2) Be physically present at the place where the presiding officer is conducting the hearing.

(c) This section does not apply to a prehearing conference, settlement conference, or proceedings for alternative dispute resolution other than binding arbitration.

11425.30 PRESIDING OFFICER; DISQUALIFICATION

(a) A person may not serve as presiding officer in an adjudicative proceeding in any of the following circumstances:

(1) The person has served as investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage.

(2) The person is subject to the authority, direction, or discretion of a person who has served as investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage.

(b) Notwithstanding subdivision (a):

(1) A person may serve as presiding officer at successive stages of an adjudicative proceeding.

(2) A person who has participated only as a decisionmaker or as an advisor to a decisionmaker in a determination of probable cause or other equivalent preliminary determination in an adjudicative proceeding or its preadjudicative stage may serve as presiding officer in the proceeding.

(c) The provisions of this section governing separation of functions as to the presiding officer also govern separation of functions as to the agency head or other person or body to which the power to hear or decide in the proceeding is delegated.

11425.40 BIAS, PREJUDICE OR INTEREST

(a) The presiding officer is subject to disqualification for bias, prejudice, or interest in the proceeding.

(b) It is not alone or in itself grounds for disqualification, without further evidence of bias, prejudice, or interest, that the presiding officer:

(1) Is or is not a member of a racial, ethnic, religious, sexual, or similar group and the proceeding involves the rights of that group.

(2) Has experience, technical competence, or specialized knowledge of, or has in any capacity expressed a view on, a legal, factual, or policy issue presented in the proceeding.

(3) Has as a lawyer or public official participated in the drafting of laws or regulations or in the effort to pass or defeat laws or regulations, the meaning, effect, or application of which is in issue in the proceeding.

(c) The provisions of this section governing disqualification of the presiding officer also govern disqualification of the agency head or other person or body to which the power to hear or decide in the proceeding is delegated.

(d) An agency that conducts an adjudicative proceeding may provide by regulation for peremptory challenge of the presiding officer.

11425.50 WRITTEN DECISION; CONTENTS

(a) The decision shall be in writing and shall include a statement of the factual and legal basis for the decision.

(b) The statement of the factual basis for the decision may be in the language of, or by reference to, the pleadings. If the statement is no more than mere repetition or paraphrase of the relevant statute or regulation, the statement shall be accompanied by a concise and explicit statement of the underlying facts of record that support the decision. If the factual basis for the decision includes a determination based substantially on the credibility of a witness, the statement shall identify any specific evidence of the observed demeanor, manner, or attitude of the witness that supports the determination, and on judicial review the court shall give great weight to the determination to the extent the determination identifies the observed demeanor, manner, or attitude of the witness that supports it.

(c) The statement of the factual basis for the decision shall be based exclusively on the evidence of record in the proceeding and on matters officially noticed the proceeding. The presiding officer's experience, technical competence, and specialized knowledge may be used in evaluating evidence.

(d) Nothing in this section limits the information that may be contained in the decision, including a summary of evidence relied on.

(e) A penalty may not be based on a guideline, criterion, bulletin, manual, instruction, order, standard of general application or other rule subject to Chapter 3.5 (commencing with Section 11340) unless it has been adopted as a regulation pursuant to Chapter 3.5 (commencing with Section 11340).

11425.60 PRECEDENT; DESIGNATION; INDEX

(a) A decision may not be expressly relied on as precedent unless it is designated as a precedent decision by the agency.

(b) An agency may designate as a precedent decision a decision or part of a decision that contains a significant legal or policy determination of general

application that is likely to recur. Designation of a decision or part of a decision as a precedent decision is not rulemaking and need not be done under Chapter 3.5 (commencing with Section 11340). An agency's designation of a decision or part of a decision, or failure to designate a decision or part of a decision, as a precedent decision is not subject to judicial review.

(c) An agency shall maintain an index of significant legal and policy determinations made in precedent decisions. The index shall be updated not less frequently than annually, unless no precedent decision has been designated since the last preceding update. The index shall be made available to the public by subscription, and its availability shall be publicized annually in the California Regulatory Notice Register.

(d) This section applies to decisions issued on or after July 1, 1997. Nothing in this section precludes an agency from designating and indexing as a precedent decision a decision issued before July 1, 1997.

11430.10 PENDING PROCEEDINGS

(a) While the proceeding is pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and opportunity for all parties to participate in the communication.

(b) Nothing in this section precludes a communication, including a communication from an employee or representative of an agency that is a party, made on the record at the hearing.

(c) For the purpose of this section, a proceeding is pending from the issuance of the agency's pleading, or from an application for an agency decision, whichever is earlier.

11430.20 PERMISSIBLE COMMUNICATIONS

A communication otherwise prohibited by Section 11430.10 is permissible in any of the following circumstances:

(a) The communication is required for disposition of an ex parte matter specifically authorized by statute.

(b) The communication concerns a matter of procedure or practice, including a request for a continuance, that is not in controversy.

11430.30 PERMISSIBLE COMMUNICATIONS FROM EMPLOYEES OR REPRESENTATIVES OF AGENCIES

A communication otherwise prohibited by Section 11430.10 from an employee or representative of an agency that is a party to the presiding officer is permissible in any of the following circumstances:

(a) The communication is for the purpose of assistance and advice to the presiding officer from a person who has not served as investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage. An

assistant or advisor may evaluate the evidence in the record but shall not furnish, augment, diminish, or modify the evidence in the record.

(b) The communication is for the purpose of advising the presiding officer concerning a settlement proposal advocated by the advisor.

(c) The communication is for the purpose of advising the presiding officer concerning any of the following matters in an adjudicative proceeding that is nonprosecutorial in character:

(1) The advice involves a technical issue in the proceeding and the advice is necessary for, and is not otherwise reasonably available to, the presiding officer, provided the content of the advice is disclosed on the record and all parties are given an opportunity to address it in the manner provided in Section 11430.50.

(2) The advice involves an issue in a proceeding of the San Francisco Bay Conservation and Development Commission, California Tahoe Regional Planning Agency, Delta Protection Commission, Water Resources Control Board, or a regional water quality control board.

11430.40 COMMUNICATIONS RECEIVED PRIOR TO SERVING AS PRESIDING OFFICER; DISCLOSURE

If, while the proceeding is pending but before serving as presiding officer, a person receives a communication of a type that would be in violation of this article if received while serving as presiding officer, the person, promptly after starting to serve, shall disclose the content of the communication on the record and give all parties an opportunity to address it in the manner provided in Section 11430.50.

11430.50 VIOLATIONS; DUTY OF PRESIDING OFFICER

(a) If a presiding officer receives a communication in violation of this article, the presiding officer shall make all of the following a part of the record in the proceeding.

(1) If the communication is written, the writing and any written response of the presiding officer to the communication.

(2) If the communication is oral, a memorandum stating the substance of the communication, any response made by the presiding officer, and the identity of each person from whom the presiding officer received the communication.

(b) The presiding officer shall notify all parties that a communication described in this section has been made a part of the record.

(c) If a party requests an opportunity to address the communication within 10 days after receipt of notice of the communication:

(1) The party shall be allowed to comment on the communication.

(2) The presiding officer has discretion to allow the party to present evidence concerning the subject of the communication, including discretion to reopen a hearing that has been concluded.

11430.60 DISQUALIFICATION OF PRESIDING OFFICER

Receipt by the presiding officer of a communication in violation of this article may be grounds for disqualification of the presiding officer. If the presiding officer is disqualified, the portion of the record pertaining to the ex parte communication may be sealed by protective order of the disqualified presiding officer.

11430.70 AGENCY HEADS OR OTHER PERSONS WITH POWER TO HEAR OR DECIDE

(a) Subject to subdivision (b), the provisions of this article governing ex parte communications to the presiding officer also govern ex parte communications in an adjudicative proceeding to the agency head or other person or body to which the power to hear or decide in the proceeding is delegated.

(b) An ex parte communication to the agency head or other person or body to which the power to hear or decide in the proceeding is delegated is permissible in an individualized ratemaking proceeding if the content of the communication is disclosed on the record and all parties are given an opportunity to address it in the manner provided in Section 11430.50.

11430.80 COMMUNICATIONS BETWEEN PRESIDING OFFICER AND AGENCY HEAD REGARDING THE MERITS OF ANY ISSUE

(a) There shall be no communication, direct or indirect, while a proceeding is pending regarding the merits of any issue in the proceeding, between the presiding officer and the agency head or other person or body to which the power to hear or decide in the proceeding is delegated.

(b) This section does not apply where the agency head or other person or body to which the power to hear or decide in the proceeding is delegated serves as both presiding officer and agency head, or where the presiding officer does not issue a decision in the proceeding.

11435.05 LANGUAGE ASSISTANCE

As used in this article, "language assistance" means oral interpretation or written translation into English of a language other than English or of English into another language for a party or witness who cannot speak or understand English or who can do so only with difficulty.

11435.10 APPLICATION OF EVIDENCE CODE §§ 754

Nothing in this article limits the application or effect of Section 754 of the Evidence Code to interpretation for a deaf or hard-of-hearing party or witness in an adjudicative proceeding.

11435.15 STATE AGENCIES PROVIDING LANGUAGE ASSISTANCE

(a) The following state agencies shall provide language assistance in adjudicative proceedings to the extent provided in this article: (See code section for specified agencies).

(b) Nothing in this section prevents an agency other than an agency listed in subdivision (a) from electing to adopt any of the procedures in this article, provided that any selection of an interpreter is subject to Section 11435.30.

(c) Nothing in this section prohibits an agency from providing an interpreter during a proceeding to which this chapter does not apply, including an informal factfinding or informal investigatory hearing.

(d) This article applies to an agency listed in subdivision (a) notwithstanding a general provision that this chapter does not apply to some or all of an agency's adjudicative proceedings.

11435.20 HEARINGS OR EXAMINATIONS; ENGLISH LANGUAGE REQUIRED

(a) The hearing, or any medical examination conducted for the purpose of determining compensation or monetary award, shall be conducted in English.

(b) If a party or the party's witness does not proficiently speak or understand English and before commencement of the hearing or medical examination requests language assistance, an agency subject to the language assistance requirement of this article shall provide the party or witness an interpreter.

11435.25 COST OF INTERPRETERS; PAYMENT; WORKER'S COMPENSATION PROCEEDINGS

(a) The cost of providing an interpreter under this article shall be paid by the agency having jurisdiction over the matter if the presiding officer so directs, otherwise by the party at whose request the interpreter is provided.

(b) The presiding officer's decision to direct payment shall be based upon an equitable consideration of all the circumstances in each case, such as the ability of the party in need of the interpreter to pay.

(c) Notwithstanding any other provision of this section, in a hearing before the Workers' Compensation Appeals Board or the Division of Workers' Compensation relating to workers' compensation claims, the payment of the costs of providing an interpreter shall be governed by the rules and regulations promulgated by the Workers' Compensation Appeals Board or the Administrative Director of the Division of Workers' Compensation, as appropriate.

11435.30 CERTIFIED COURT INTERPRETERS; ADMINISTRATIVE HEARING ANNUAL LIST

(a) The State Personnel Board shall establish, maintain, administer, and publish annually an updated list of certified administrative hearing interpreters it has determined meet the minimum standards in interpreting

skills and linguistic abilities in languages designated pursuant to Section 11435.40.

(b) Court interpreters certified pursuant to Section 68562 and administrative hearing interpreters certified pursuant to Section 11435.30 shall be deemed certified for purposes of this section.

11435.35 CERTIFIED MEDICAL EXAMINATION INTERPRETERS; ANNUAL LIST; COURT INTERPRETERS

(a) The State Personnel Board shall establish, maintain, administer, and publish annually, an updated list of certified medical examination interpreters it has determined meet the minimum standards in interpreting skills and linguistic abilities in languages designated pursuant to Section 11435.40.

(b) Court interpreters certified pursuant to Section 68562 and administrative hearing interpreters certified pursuant to Section 11435.30 shall be deemed certified for purposes of this section.

11435.40 CERTIFICATION; LANGUAGES

(a) The State Personnel Board shall designate the languages for which certification shall be established under Section 11435.30 and 11435.35. The languages designated shall include, but not be limited to, Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean, Portuguese, and Vietnamese until the State Personnel Board finds that there is an insufficient need for interpreting assistance in these languages.

(b) The language designations shall be based on the following:

(1) The language needs of non-English-speaking persons appearing before the administrative agencies, as determined by consultation with the agencies.

(2) The cost of developing a language examination.

(3) The availability of experts needed to develop a language examination.

(4) Other information the board deems relevant.

11435.45 FEES; INTERPRETER EXAMINATIONS; CERTIFICATE RENEWAL

(a) The State Personnel Board shall establish and charge fees for applications to take interpreter examinations and for renewal of certifications. The purpose of these fees is to cover the annual projected costs of carrying out this article. The fees may be adjusted each fiscal year by a percent that is equal to or less than the percent change in the California Necessities Index prepared by the Commission on State Finance.

(b) Each certified administrative hearing interpreter and each certified medical examination interpreter shall pay a fee, due on July 1 of each year, for the renewal of the certification. Court interpreters certified under Section 68562 shall not pay any fees required by this section.

(c) If the amount of money collected in fees is not sufficient to cover the costs of carrying out this article, the board shall charge and be reimbursed a pro rata share of the additional costs by the state agencies that conduct administrative hearings.

11435.50 REMOVAL OF NAME FROM LIST OF CERTIFIED INTERPRETERS; GROUNDS

The State Personnel Board may remove the name of a person from the list of certified interpreters if any of the following conditions occurs:

- (a) The person is deceased.
- (b) The person notifies the board that the person is unavailable for work.
- (c) The person does not submit a renewal fee as required by Section 11435.45.

11435.55 CERTIFICATION REQUIREMENT; USE OF NONCERTIFIED INTERPRETERS

(a) An interpreter used in a hearing shall be certified pursuant to Section 11435.30. However, if an interpreter certified pursuant to Section 11435.30 cannot be present at the hearing, the hearing agency shall have discretionary authority to provisionally qualify and use another interpreter.

(b) An interpreter used in a medical examination shall be certified pursuant to Section 11435.35. However, if an interpreter certified pursuant to Section 11435.35 cannot be present at the medical examination, the physician provisionally may use another interpreter if that fact is noted in the record of the medical evaluation.

11435.60 NOTICE OF RIGHT TO INTERPRETER

Every agency subject to the language assistance requirement of this article shall advise each party of the right to an interpreter at the same time that each party is advised of the hearing date or medical examination. Each party in need of an interpreter shall also be encouraged to give timely notice to the agency conducting the hearing or medical examination so that appropriate arrangements can be made.

11435.65 CONFIDENTIALITY; INTEREST OF INTERPRETERS

(a) The rules of confidentiality of the agency, if any, that apply in an adjudicative proceeding shall apply to any interpreter in the hearing or medical examination, whether or not the rules so state.

(b) The interpreter shall not have had any involvement in the issues of the case prior to the hearing.

11440.10 AUTHORITY OF AGENCY HEAD FOLLOWING DECISION

(a) The agency head may do any of the following with respect to a decision of the presiding officer or the agency:

- (1) Determine to review some but not all issues, or not to exercise any review.
 - (2) Delegate its review authority to one or more persons.
 - (3) Authorize review by one or more persons, subject to further review by the agency head.
- (b) By regulation an agency may mandate review, or may preclude or limit review, of a decision of the presiding officer or the agency.

11440.20 SERVICE; NOTICE

Service of a writing on, or giving of a notice to, a person in a procedure provided in this chapter is subject to the following provisions:

- (a) The writing or notice shall be delivered personally or sent by mail or other means to the person at the person's last known address or, if the person is a party with an attorney or other authorized representative of record in the proceeding, to the party's attorney or other authorized representative. If a party is required by statute or regulation to maintain an address with an agency, the party's last known address is the address maintained with the agency.
- (b) Unless a provision specified the form of mail, service or notice by mail may be by first-class mail, registered mail, or certified mail, by mail delivery service, by facsimile transmission if complete and without error, or by other electronic means as provided by regulation, in the discretion of the sender.

11440.30 CONDUCT OF HEARING BY ELECTRONIC MEANS

- (a) The presiding officer may conduct all or part of a hearing by telephone, television, or other electronic means if each participant in the hearing has an opportunity to participate in and to hear the entire proceeding while it is taking place and to observe exhibits.
- (b) The presiding officer may not conduct all or part of a hearing by telephone, television, or other electronic means if a party objects.

11440.40 SEXUAL HARASSMENT, SEXUAL ASSAULT OR SEXUAL BATTERY; EVIDENCE

- (a) In any proceeding under subdivision (h) or (i) of Section 12940, or Section 19572 or 19702, alleging conduct that constitutes sexual harassment, sexual assault, or sexual battery, evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is subject to all of the following limitations:
 - (1) The evidence is not discoverable unless it is to be offered at a hearing to attack the credibility of the complainant as provided for under subdivision (b). This paragraph is intended only to limit the scope of discovery; it is not intended to affect the methods of discovery allowed by statute.
 - (2) The evidence is not admissible at the hearing unless offered to attack the credibility of the complainant as provided for under subdivision (b).

Reputation or opinion evidence regarding the sexual behavior of the complainant is not admissible for any purpose.

(b) Evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is presumed inadmissible absent an offer of proof establishing its relevance and reliability and that its probative value is not substantially outweighed by the probability that its admission will create substantial danger of undue prejudice or confuse the issue.

(c) As used in this section "complainant" means a person claiming to have been subjected to conduct that constitutes sexual harassment, sexual assault, or sexual battery.

11440.50 INTERVENTION

This section applies in adjudicative proceedings of an agency if the agency by regulation provides that this section is applicable in the proceedings.

(b) The presiding officer shall grant a motion for intervention if all of the following conditions are satisfied:

(1) The motion is submitted in writing, with copies served on all parties named in the agency's pleading.

(2) The motion is made as early as practicable in advance of the hearing. If there is a prehearing conference, the motion shall be made in advance of the prehearing conference and shall be resolved at the prehearing conference.

(3) The motion states facts demonstrating that the applicant's legal rights, duties, privileges, or immunities will be substantially affected by the proceeding or that the applicant qualifies as an intervenor under a statute or regulation.

(4) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceeding will not be impaired by allowing the intervention.

(c) If an applicant qualifies for intervention, the presiding officer may impose conditions on the intervenor's participation in the proceeding, either at the time that intervention is granted or at a subsequent time. Conditions may include the following:

(1) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the motion.

(2) Limiting or excluding the use of discovery, cross-examination, and other procedures involving the intervenor so as to promote the orderly and prompt conduct of the proceeding.

(3) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceeding.

(4) Limiting or excluding the intervenor's participation in settlement negotiations.

(d) As early as practicable in advance of the hearing the presiding officer shall issue an order granting or denying the motion for intervention, specifying any conditions, and briefly stating the reasons for the order. The presiding officer may modify the order at any time, stating the reasons for modification. The presiding officer shall promptly give notice of an order granting, denying, or modifying intervention to the applicant and to all parties.

(e) Whether the interests of justice and the orderly and prompt conduct of the proceedings will be impaired by allowing intervention is a determination to be made in the sole discretion, and based on the knowledge and judgment at that time, of the presiding officer. The determination is not subject to administrative or judicial review.

(f) Nothing in this section precludes an agency from adopting a regulation that permits participation by a person short of intervention as a party, subject to Article 7 (commencing with Section 11430.10) of Chapter 4.5.

11445.10 INFORMAL HEARING PROCEDURE; LEGISLATIVE FINDINGS AND DECLARATIONS

(a) Subject to the limitations in this article, an agency may conduct an adjudicative proceeding under the informal hearing procedure provided in this article.

(b) The Legislature finds and declares the following:

(1) The informal hearing procedure is intended to satisfy due process and public policy requirements in a manner that is simpler and more expeditious than hearing procedures otherwise required by statute, for use in appropriate circumstances.

(2) The informal hearing procedure provides a forum in the nature of a conference in which a party has an opportunity to be heard by the presiding officer.

(3) The informal hearing procedure provides a forum that may accommodate a hearing where by regulation or statute a member of the public may participate without appearing or intervening as a party.

11445.20 PROCEEDINGS

Subject to Section 11445.30, an agency may use an informal hearing procedure in any of the following proceedings, if in the circumstances its use does not violate another statute or the federal or state Constitution:

(a) A proceeding where there is no disputed issue of material fact.

(b) A proceeding where there is a disputed issue of material fact, if the matter is limited to any of the following:

- (1) A monetary amount of not more than one thousand dollars (\$1,000).
- (2) A disciplinary sanction against a student that does not involve expulsion from an academic institution or suspension for more than 10 days.
- (3) A disciplinary sanction against an employee that does not involve discharge from employment, demotion, or suspension for more than 5 days.
- (4) A disciplinary sanction against a licensee that does not involve an actual revocation of a license or an actual suspension of a license for more than five days. Nothing in this section precludes an agency from imposing a stayed revocation or a stayed suspension of a license in an informal hearing.
- (c) A proceeding where, by regulation, the agency has authorized use of an informal hearing.
- (d) A proceeding where an evidentiary hearing for determination of facts is not required by statute but where the agency determines the federal or state Constitution may require a hearing.

11445.30 NOTICE OF HEARING; OBJECTION

- (a) The notice of hearing shall state the agency's selection of the informal hearing procedure.
- (b) Any objection of a party to use of the informal hearing procedure shall be made in the party's pleading.
- (c) An objection to use of the informal hearing procedure shall be resolved by the presiding officer before the hearing on the basis of the pleadings and any written submissions in support of the pleadings. An objection to use of the informal hearing procedure in a disciplinary proceeding involving an occupational license shall be resolved in favor of the licensee.

11445.40 HEARING PROCEDURES APPLICABLE; AUTHORITY OF PRESIDING OFFICER

- (a) Except as provided in this article, the hearing procedures otherwise required by statute for an adjudicative proceeding apply to an informal hearing.
- (b) In an informal hearing the presiding officer shall regulate the course of the proceeding. The presiding officer shall permit the parties and may permit others to offer written or oral comments on the issues. The presiding officer may limit the use of witnesses, testimony, evidence, and argument, and may limit or eliminate the use of pleadings, intervention, discovery, prehearing conferences, and rebuttal.

11445.50 DENIAL OF USE OF INFORMAL HEARING PROCEDURE; CROSS-EXAMINATION; JUDICIAL REVIEW

- (a) The presiding officer may deny use of the informal hearing procedure, or may convert an informal hearing to a formal hearing after an informal hearing is commenced, if it appears to the presiding officer that cross-

examination is necessary for proper determination of the matter and that the delay, burden, or complication due to allowing cross-examination in the informal hearing will be more than minimal.

(b) An agency, by regulation, may specify categories of cases in which cross-examination is deemed not necessary for proper determination of the matter under the informal hearing procedure. The presiding officer may allow cross-examination of witnesses in an informal hearing notwithstanding an agency regulation if it appears to the presiding officer that in the circumstances cross-examination is necessary for proper determination of the matter.

(c) The actions of the presiding officer under this section are not subject to judicial review.

11445.60 MATERIAL FACTS IN DISPUTE; PRESENTATION OF PROOF

(a) If the presiding officer has reason to believe that material facts are in dispute, the presiding officer may require a party to state the identity of the witnesses or other sources through which the party would propose to present proof if the proceeding were converted to a formal or other applicable hearing procedure. If disclosure of a fact, allegation, or source is privileged or expressly prohibited by a regulation, statute, or the federal or state Constitution, the presiding officer may require the party to indicate that confidential facts, allegations, or sources are involved, but not to disclose the confidential facts, allegations, or sources.

(b) If a party has reason to believe that essential facts must be obtained in order to permit an adequate presentation of the case, the party may inform the presiding officer regarding the general nature of the facts and the sources from which the party would propose to obtain the facts if the proceeding were converted to a formal or other applicable hearing procedure.

11450.05 APPLICATION OF ARTICLE

(a) This article applies in an adjudicative proceeding required to be conducted under Chapter 5 (commencing with Section 11500).

(b) An agency may use the subpoena procedure provided in this article in an adjudicative proceeding not required to be conducted under Chapter 5 (commencing with Section 11500), in which case all the provisions of this article apply including, but not limited, issuance of a subpoena at the request of a party or by the attorney of record for a party under Section 11450.20.

11450.10 ISSUANCE

(a) Subpoenas and subpoenas duces tecum may be issued for attendance at the hearing and for production of documents at any reasonable time and place or at a hearing.

(b) The custodian of documents that are the subject of a subpoena duces tecum may satisfy the subpoena by delivery of the documents or a copy of the documents, or by making the documents available for inspection or copying,

together with an affidavit in compliance with Section 1561 of the Evidence Code.

11450.20 ISSUER; SERVICE

(a) Subpoenas and subpoenas duces tecum shall be issued by the agency or presiding officer at the request of a party, or by the attorney of record for a party, in accordance with Sections 1985 to 1985.4, inclusive, of the Code of Civil Procedure.

(b) The process extends to all parts of the state and shall be served in accordance with Sections 1987 and 1988 of the Code of Civil Procedure. A subpoena or subpoena duces tecum may also be delivered by certified mail return receipt requested or by messenger. Service by messenger shall be effected when the witness acknowledges receipt of the subpoena to the sender, by telephone, by mail, or in person, and identifies himself or herself either by reference to date of birth and driver's license number or Department of Motor Vehicles identification number, or the sender may verify receipt of the subpoena by obtaining other identifying information from the recipient. The sender shall make a written notation of the acknowledgment. A subpoena issued and acknowledged pursuant to this section has the same force and effect as a subpoena personally served. Failure to comply with a subpoena issued and acknowledged pursuant to this section may be punished as a contempt and the subpoena may so state. A party requesting a continuance based upon the failure of a witness to appear at the time and place required for the appearance or testimony pursuant to a subpoena, shall prove that the party has complied with this section. The continuance shall only be granted for a period of time that would allow personal service of the subpoena and in no event longer than that allowed by law.

(c) No witness is obliged to attend unless the witness is a resident of the state at the time of service.

11450.30 OBJECTIONS; PROTECTIVE ORDERS

(a) A person served with a subpoena or a subpoena duces tecum may object to its terms by a motion for a protective order, including a motion to quash.

(b) The objection shall be resolved by the presiding officer on terms and conditions that the presiding officer declares. The presiding officer may make another order that is appropriate to protect the parties or the witness from unreasonable or oppressive demands, including violations of the right to privacy.

(c) A subpoena or a subpoena duces tecum issued by the agency on its own motion may be quashed by the agency.

11450.40 WITNESSES; MILEAGE AND FEES

A witness appearing pursuant to a subpoena or a subpoena duces tecum, other than a party, shall receive for the appearance the following mileage and fees, to be paid by the party at whose request the witness is subpoenaed:

(a) The same mileage allowed by law to a witness in a civil case.

(b) The same fees allowed by law to a witness in a civil case. This subdivision does not apply to an officer or employee of the state or a political subdivision of the state.

11450.50 WRITTEN NOTICE

(a) In the case of the production of a party to the record of a proceeding or of a person for whose benefit a proceeding is prosecuted or defended, the service of a subpoena on the witness is not required if written notice requesting the witness to attend, with the time and place of the hearing, is served on the attorney of the party or person.

(b) Service of written notice to attend under this section shall be made in the manner and is subject to the conditions provided in Section 1987 of the Code of Civil Procedure for service of written notice to attend in a civil action or proceeding.

11455.10 CONTEMPT SANCTION; GROUNDS

A person is subject to the contempt sanction for any of the following in an adjudicative proceeding before an agency:

- (a) Disobedience of or resistance to a lawful order.
- (b) Refusal to take the oath or affirmation as a witness or thereafter refusal to be examined.
- (c) Obstruction or interruption of the due course of the proceeding during a hearing or near the place of the hearing by any of the following:
 - (1) Disorderly, contemptuous, or insolent behavior toward the presiding officer while conducting the proceeding.
 - (2) Breach of the peace, boisterous conduct, or violent disturbance.
 - (3) Other unlawful interference with the process or proceedings of the agency.
 - (d) Violation of the prohibition of ex parte communications under Article 7 (commencing with Section 11430.10).
- (e) Failure or refusal, without substantial justification, to comply with a deposition order, discovery request, subpoena, or other order of the presiding officer, or moving, without substantial justification, to compel discovery.

11455.20 ORDER TO SHOW CAUSE; PURGE OF CONTEMPT

(a) The presiding officer or agency head may certify the facts that justify the contempt sanction against a person to the superior court in and for the county where the proceeding is conducted. The court shall thereupon issue an order directing the person to appear before the court at a specified time and place, and then and there to show cause why the person should not be punished for contempt. The order and a copy of the certified statement shall be served on

the person. Upon service of the order and a copy of the certified statement, the court has jurisdiction of the matter.

(b) The same proceedings shall be had, the same penalties may be imposed, and the person charged may purge the contempt in the same way, as in the case of a person who has committed a contempt in the trial of a civil action before a superior court.

11455.30 EXPENSES; ATTORNEY'S FEES; REVIEW

(a) The presiding officer may order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay as defined in Section 128.5 of the Code of Civil Procedure.

(b) The order, or denial of an order, is subject to judicial review in the same manner as a decision in the proceeding. The order is enforceable in the same manner as a money judgment or by the contempt sanction.

11460.10 AUTHORITY

Subject to the limitations in this article, an agency may conduct an adjudicative proceeding under the emergency decision procedure provided in this article.

11460.20 EMERGENCY DECISION FOR TEMPORARY; INTERIM RELIEF; REGULATION

(a) An agency may issue an emergency decision for temporary, interim relief under this article if the agency has adopted a regulation that provides that the agency may use the procedure provided in this article.

(b) The regulation shall elaborate the application of the provisions of this article to an emergency decision by the agency, including all of the following:

(1) Define the specific circumstances in which an emergency decision may be issued under this article.

(2) State the nature of the temporary, interim relief that the agency may order.

(3) Prescribe the procedures that will be available before and after issuance of an emergency decision under this article. The procedures may be more protective of the person to which the agency action is directed than those provided in this article.

(c) This article does not apply to an emergency decision, including a cease and desist order or an interim or temporary suspension order, issued pursuant to other express statutory authority.

11460.30 IMMEDIATE DANGER TO PUBLIC HEALTH, SAFETY OR WELFARE

(a) An agency may only issue an emergency decision under this article in a situation involving an immediate danger to the public health, safety, or welfare that requires immediate agency action.

(b) An agency may only take action under this article that is necessary to prevent or avoid the immediate danger to the public health, safety, or welfare that justifies issuance of an emergency decision.

(c) An emergency decision issued under this article is limited to temporary, interim relief. The temporary, interim relief is subject to judicial review under Section 11460.80, and the underlying issue giving rise to the temporary, interim relief is subject to an adjudicative proceeding pursuant to Section 11460.60.

11460.40 NOTICE AND HEARING

(a) Before issuing an emergency decision under this article, the agency shall, if practicable, give the person to which the agency action is directed notice and an opportunity to be heard.

(b) Notice and hearing under this section may be oral or written, including notice and hearing by telephone, facsimile transmission, or other electronic means, as the circumstances permit. The hearing may be conducted in the same manner as an informal hearing.

11460.50 EMERGENCY DECISION; CONTENTS

(a) The agency shall issue an emergency decision, including a brief explanation of the factual and legal basis and reasons for the emergency decision, to justify the determination of an immediate danger and the agency's emergency decision to take the specific action.

(b) The agency shall give notice to the extent practicable to the person to which the agency action is directed. The emergency decision is effective when issued or as provided in the decision.

11460.60 ADJUDICATIVE PROCEEDING

(a) After issuing an emergency decision under this article for temporary, interim relief, the agency shall conduct an adjudicative proceeding under a formal, informal or other applicable hearing procedure to resolve the underlying issues giving rise to the temporary, interim relief.

(b) The agency shall commence an adjudicative proceeding under another procedure within 10 days after issuing an emergency decision under this article, notwithstanding the pendency of proceedings for judicial review of the emergency decision.

11460.70 AGENCY RECORD

The agency record consists of any documents concerning the matter that were considered or prepared by the agency. The agency shall maintain these documents as its official record.

11460.80 JUDICIAL REVIEW

(a) On issuance of an emergency decision under this article, the person to which the agency action is directed may obtain judicial review of the decision in the manner provided in this section without exhaustion of administrative remedies.

(b) Judicial review under this section shall be pursuant to Section 1094.5 of the Code of Civil Procedure, subject to the following provisions:

(1) The hearing shall be on the earliest day that the business of the court will admit of, but not later than 15 days after service of the petition on the agency.

(2) Where it is claimed that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(3) A party, on written request to another party, before the proceedings for review and within 10 days after issuance of the emergency decision, is entitled to appropriate discovery.

(4) The relief that may be ordered on judicial review is limited to a stay of the emergency decision.

11465.10 AUTHORITY

Subject to the limitations in this article, an agency may conduct an adjudicative proceeding under the declaratory decision procedure provided in this article.

11465.20 APPLICATION; ISSUANCE

(a) A person may apply to an agency for a declaratory decision as to the applicability to specified circumstances of a statute, regulation, or decision within the primary jurisdiction of the agency.

(b) The agency in its discretion may issue a declaratory decision in response to the application. The agency shall not issue a declaratory decision if any of the following applies:

(1) Issuance of the decision would be contrary to a regulation adopted under this article.

(2) The decision would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory decision proceeding.

(3) The decision involves a matter that is the subject of pending administrative or judicial proceedings.

(c) An application for a declaratory decision is not required for exhaustion of the applicant's administrative remedies for purposes of judicial review.

11465.30 NOTICE

Within 30 days after receipt of an application for a declaratory decision, an agency shall give notice of the application to all persons to which notice of an adjudicative proceeding is otherwise required, and may give notice to any other person.

11465.40 APPLICABLE LAW

The provisions of a formal, informal, or other applicable hearing procedure do not apply to an agency proceeding for a declaratory decision except to the extent provided in this article or to the extent the agency so provides by regulation or order.

11465.50 AGENCY ACTION

(a) Within 60 days after receipt of an application for a declaratory decision, an agency shall do one of the following, in writing:

(1) Issue a decision declaring the applicability of the statute, regulation, or decision in question to the specified circumstances.

(2) Set the matter for specified proceedings.

(3) Agree to issue a declaratory decision by a specified time.

(4) Decline to issue a declaratory decision, stating in writing the reasons for its action. Agency action under this paragraph is not subject to judicial review.

(b) A copy of the agency's action under subdivision (a) shall be served promptly on the applicant and any other party.

(c) If an agency has not taken action under subdivision (a) within 60 days after receipt of an application for a declaratory decision, the agency is considered to have declined to issue a declaratory decision on the matter.

11465.60 CONTENTS OF DECISION; STATUS

(a) A declaratory decision shall contain the names of all parties to the proceeding, the particular facts on which it is based, and the reasons for its conclusion.

(b) A declaratory decision has the same status and binding effect as any other decision issued by the agency in an adjudicative proceeding.

11465.70 MODEL REGULATIONS

(a) The Office of Administrative Hearings shall adopt and promulgate model regulations under this article that are consistent with the public interest and with the general policy of this article to facilitate and encourage agency issuance of reliable advice. The model regulations shall provide for all of the following:

- (1) A description of the classes of circumstances in which an agency will not issue a declaratory decision.
- (2) The form, contents, and filing of an application for a declaratory decision.
- (3) The procedural rights of a person in relation to an application.
- (4) The disposition of an application.

(b) The regulations adopted by the Office of Administrative Hearings under this article apply in an adjudicative proceeding unless an agency adopts its own regulations to govern declaratory decisions of the agency.

(c) This article does not apply in an adjudicative proceeding to the extent an agency by regulation provides inconsistent rules or provides that this article is not applicable in a proceeding of the agency.

11470.10 AUTHORITY OF PRESIDING OFFICER OR OTHER AGENCY OFFICIAL; NOTICE

(a) Subject to any applicable regulation adopted under Section 11470.50, at any point in an agency proceeding the presiding officer or other agency official responsible for the proceeding:

- (1) May convert the proceeding to another type of agency proceeding provided for by statute if the conversion is appropriate, is in the public interest, and does not substantially prejudice the rights of a party.
- (2) Shall convert the proceeding to another type of agency proceeding provided for by statute, if required by regulation or statute.

(b) A proceeding of one type may be converted to a proceeding of another type only on notice to all parties to the original proceeding.

11470.20 APPOINTMENT OF SUCCESSOR

If the presiding officer or other agency official responsible for the original proceeding would not have authority over the new proceeding to which it is to be converted, the agency head shall appoint a successor to preside over or be responsible for the new proceeding.

11470.30 RECORD OF ORIGINAL PROCEEDING

To the extent practicable and consistent with the rights of parties and the requirements of this article relating to the new proceeding, the record of the original agency proceeding shall be used in the new agency proceeding.

11470.40 DUTIES OF PRESIDING OFFICER OF OTHER AGENCY OFFICIAL RESPONSIBLE FOR NEW PROCEEDINGS

After a proceeding is converted from one type to another, the presiding officer or other agency official responsible for the new proceeding shall do all of the following:

- (a) Give additional notice to parties or other persons necessary to satisfy the statutory requirements relating to the new proceeding.
- (b) Dispose of the matters involved without further proceedings if sufficient proceedings have already been held to satisfy the statutory requirements relating to the new proceeding.
- (c) Conduct or cause to be conducted any additional proceedings necessary to satisfy the statutory requirements relating to the new proceeding, and allow the parties a reasonable time to prepare for the new proceeding.

11470.50 REGULATIONS

An agency may adopt regulations to govern the conversion of one type of proceeding to another. The regulations may include an enumeration of the factors to be considered in determining whether and under what circumstances one type of proceeding will be converted to another.

GOVERNMENT CODE**ADMINISTRATIVE ADJUDICATION**

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11500 DEFINITIONS

In this chapter unless the context or subject matter otherwise requires:

(a) "Agency" includes the state boards, commissions, and officers to which this chapter is made applicable by law, except that wherever the word "agency" alone is used the power to act may be delegated by the agency, and wherever the words "agency itself" are used the power to act shall not be delegated unless the statutes relating to the particular agency authorize the delegation of the agency's power to hear and decide.

(b) "Party" includes the agency, the respondent, and any person, other than an officer or an employee of the agency in his or her official capacity, who has been allowed to appear or participate in the proceeding.

(c) "Respondent" means any person against whom an accusation is filed pursuant to Section 11503 or against whom a statement of issues is filed pursuant to Section 11504.

(d) "Administrative law judge" means an individual qualified under Section 11502.

(e) "Agency member" means any person who is a member of any agency to which this chapter is applicable and includes any person who himself or herself constitutes an agency.

11501 APPLICATION OF CHAPTER; APPLICATION OF OTHER LAW

(a) This chapter applies to any agency as determined by the statutes relating to that agency.

(b) This chapter applies to an adjudicative proceeding of an agency created on or after July 1, 1997, unless the statutes relating to the proceeding provide otherwise.

(c) Chapter 4.5 (commencing with Section 11400) applies to an adjudicative proceeding required to be conducted under this chapter, unless the statutes relating to the proceeding provide otherwise.

11502 ADMINISTRATIVE LAW JUDGES; DUTIES; APPOINTMENT; QUALIFICATIONS

(a) All hearings of state agencies required to be conducted under this chapter shall be conducted by administrative law judges on the staff of the Office of Administrative Hearings. This subdivision applies to a hearing required to be conducted under this chapter that is conducted under the informal hearing or emergency decision procedure provided in Chapter 4.5 (commencing with Section 11400).

(b) The Director of the Office of Administrative Hearings has power to appoint a staff of administrative law judges for the office as provided in Section 11370.3. Each administrative law judge shall have been admitted to practice law in this state for at least five years immediately preceding his or her

appointment and shall possess any additional qualifications established by the State Personnel Board for the particular class of position involved.

11503 REVOCATION, SUSPENSION, LIMITATION, OR CONDITION OF A RIGHT, AUTHORITY, LICENSE OR PRIVILEGE; ACCUSATION; CONTENTS; VERIFICATION

A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

11504 GRANT, ISSUANCE, OR RENEWAL OR RIGHT, AUTHORITY, LICENSE, OR PRIVILEGE; STATEMENT OF ISSUES; CONTENTS; VERIFICATION; SERVICE

A hearing to determine whether a right, authority, license or privilege should be granted, issued or renewed shall be initiated by filing a statement of issues. The statement of issues shall be a written statement specifying the statutes and rules with which the respondent must show compliance by producing proof at the hearing and, in addition, any particular matters which have come to the attention of the initiating party and which would authorize a denial of the agency action sought. The statement of issues shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief. The statement of issues shall be served in the same manner as an accusation; provided, that, if the hearing is held at the request of the respondent, Sections 11505 and 11506 shall not apply and the statement of issues together with the notice of hearing shall be delivered or mailed to the parties as provided in Section 11509. Unless a statement to respondent is served pursuant to Section 11505, a copy of Sections 11507.5, 11507.6, and 11507.7, and the name and address of the person to whom requests permitted by Section 11505 may be made, shall be served with the statement of issues.

11504.5 STATEMENTS OF ISSUES; LAW APPLICABLE

In the following sections of this chapter, all references to accusations shall be deemed to be applicable to statements of issues except in those cases mentioned in subdivision (a) of Section 11505 and Section 11506 where compliance is not required.

11505 SERVICE OF ACCUSATION; NOTICE OF DEFENSE; REQUEST FOR HEARING; DISCOVERY; POSTPONEMENT

(a) Upon the filing of the accusation the agency shall serve a copy thereof on the respondent as provided in subdivision (c). The agency may include with the accusation any information which it deems appropriate, but it shall

include a post card or other form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under Section 11506. The copy of the accusation shall include or be accompanied by (1) a statement that respondent may request a hearing by filing a notice of defense as provided in Section 11506 within 15 days after service upon the respondent of the accusation, and that failure to do so will constitute a waiver of the respondent's right to a hearing, and (2) copies of Sections 11507.5, 11507.6, and 11507.7.

(b) The statement to respondent shall be substantially in the following form:

Unless a written request for a hearing signed by or on behalf of the person named as respondent in the accompanying accusation is delivered or mailed to the agency within 15 days after the accusation was personally served on you or mailed to you, (the California Commission on Teacher Credentialing) may proceed upon the accusation without a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled Notice of Defense, or by delivering or mailing a notice of defense as provided by Section 11506 of the Government Code to: (California Commission on Teacher Credentialing, 1900 Capitol Avenue, Sacramento, CA 95814-4213). You may, but need not, be represented by counsel at any or all stages of these proceedings.

If you desire the names and addresses of witnesses or an opportunity to inspect and copy the items mentioned in Section 11507.6 of the Government Code in the possession, custody or control of the agency, you may contact: California Commission on Teacher Credentialing, Division of Professional Practices, 1900 Capitol Avenue, Sacramento, CA 95814-4213.

The hearing may be postponed for good cause. If you have good cause, you are obliged to notify the agency or, if an administrative law judge has been assigned to the hearing, the Office of Administrative Hearings, within 10 working days after you discover the good cause. Failure to give notice within 10 days will deprive you of a postponement.

(c) The accusation and all accompanying information may be sent to the respondent by any means selected by the agency. But no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent shall have been served personally or by registered mail as provided herein, or shall have filed a notice of defense or otherwise appeared. Service may be proved in the manner authorized in civil actions. Service by registered mail shall be effective if a statute or agency rule requires the respondent to file the respondent's address with the agency and to notify the agency of any change, and if a registered letter containing the accusation and accompanying material is mailed, addressed to the respondent at the latest address on file with the agency.

11506 NOTICE OF DEFENSE; GROUNDS; RIGHT TO HEARING

(a) Within 15 days after service of the accusation the respondent may file with the agency a notice of defense in which the respondent may:

(1) Request a hearing.

(2) Object to the accusation upon the ground that it does not state acts or omissions upon which the agency may proceed.

(3) Object to the form of the accusation on the ground that it is so indefinite or uncertain that the respondent cannot identify the transaction or prepare a defense.

(4) Admit the accusation in whole or in part.

(5) Present new matter by way of defense.

(6) Object to the accusation upon the ground that, under the circumstances, compliance with the requirements of a regulation would result in a material violation of another regulation enacted by another department affecting substantive rights.

(b) Within the time specified respondent may file one or more notices of defense upon any or all of these grounds but all of these notices shall be filed within that period unless the agency in its discretion authorizes the filing of a later notice.

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing. Unless objection is taken as provided in paragraph (3) of subdivision (a), all objections to the form of the accusation shall be deemed waived.

(d) The notice of defense shall be in writing signed by or on behalf of the respondent and shall state the respondent's mailing address. It need not be verified or follow any particular form.

(e) As used in this section, "file," "files," "filed," or "filing" means "delivered or mailed" to the agency as provided in Section 11505.

11507 AMENDED OR SUPPLEMENTAL ACCUSATION BEFORE SUBMISSION OF CASE

At any time before the matter is submitted for decision the agency may file or permit the filing of an amended or supplemental accusation. All parties shall be notified thereof. If the amended or supplemental accusation presents new charges the agency shall afford respondent a reasonable opportunity to prepare his defense thereto, but he shall not be entitled to file a further pleading unless the agency in its discretion so orders. Any new charges shall be deemed controverted, and any objections to the amended or supplemental accusation may be made orally and shall be noted in the record.

11507.3 CONSOLIDATED PROCEEDINGS

(a) When proceedings that involve a common question of law or fact are pending, the administrative law judge on the judge's own motion or on motion of a party may order a joint hearing of any or all the matters at issue in the proceedings. The administrative law judge may order all the proceedings

consolidated and may make orders concerning the procedure that may tend to avoid unnecessary costs or delay.

(b) The administrative law judge on the judge's own motion or on motion of a party, in furtherance of convenience or to avoid prejudice or when separate hearings will be conducive to expedition and economy, may order a separate hearing of any issue, including an issue raised in the notice of defense, or of any number of issues.

11507.5 DISCOVERY; EXCLUSIVE PROVISIONS

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

11507.6 REQUEST FOR DISCOVERY; STATEMENTS; WRITINGS; INVESTIGATIVE REPORTS

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to such person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

11507.7 MOTION TO COMPEL DISCOVERY

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provision, of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served.

Where the order denies relief to the moving party, the order shall be effective on the date it is served.

11508 TIME AND PLACE OF HEARING

(a) The agency shall consult the office, and subject to the availability of its staff, shall determine the time and place of hearing. The hearing shall be held in Oakland if the transaction occurred or the respondent resides within the First or Sixth Appellate District, in the County of Los Angeles if the transaction occurred or the respondent resides within the Second or Fourth Appellate District other than the County of Imperial or San Diego, in the County of Sacramento if the transaction occurred or the respondent resides within the Third or Fifth Appellate District, and in the County of San Diego if the transaction occurred or the respondent resides within the Fourth Appellate District in the County of Imperial or San Diego.

(b) Notwithstanding subdivision (a):

(1) If the transaction occurred in a district other than that of respondent's residence, the agency may select the county appropriate for either district.

(2) The agency may select a different place nearer the place where the transaction occurred or the respondent resides.

(3) The parties by agreement may select any place within the state.

(c) The respondent may move for, and the administrative law judge has discretion to grant or deny, a change in the place of the hearing. A motion for a change in the place of the hearing shall be made within 10 days after service of the notice of hearing on the respondent.

11509 NOTICE OF HEARING

The agency shall deliver or mail a notice of hearing to all parties at least 10 days prior to the hearing. The hearing shall not be prior to the expiration of the time within which the respondent is entitled to file a notice of defense.

The notice to respondent shall be substantially in the following form but may include other information:

You are hereby notified that a hearing will be held before (name of agency) at (place of hearing) on the _____ day of _____, 19____, at the hour of _____, upon the charges made in the accusation served upon you. If you object to the place of hearing, you must notify the presiding officer within 10 days after this notice is served on you. Failure to notify the presiding officer within 10 days will deprive you of a change in the place of the hearing. You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. You may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas

to compel the attendance of witnesses and the production of books, documents or other things by applying to (insert appropriate agency).

11511 DEPOSITIONS

On verified petition of any party, an administrative law judge or, if an administrative law judge has not been appointed, an agency may order that the testimony of any material witness residing within or without the state be taken by deposition in the manner prescribed by law for depositions in civil actions under Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure. The petition shall set forth the nature of the pending proceeding; the name and address of the witness whose testimony is desired; a showing of the materiality of his testimony; a showing that the witness will be unable or cannot be compelled to attend; and shall request an order requiring the witness to appear and testify before an officer named in the petition for that purpose. The petitioner shall serve notice of hearing and a copy of the petition on the other parties at least 10 days before the hearing. Where the witness resides outside the state and where the administrative law judge or agency has ordered the taking of testimony by deposition, the agency shall obtain an order of court to that effect by filing a petition therefor in the superior court in Sacramento County. The proceedings thereon shall be in accordance with the provisions of Section 11189.

11511.5 PREHEARING CONFERENCE; SUBJECT MATTER; PREHEARING ORDER

(a) On motion of a party or by order of an administrative law judge, the administrative law judge may conduct a prehearing conference. The administrative law judge shall set the time and place for the prehearing conference, and shall give reasonable written notice to all parties.

(b) The prehearing conference may deal with one or more of the following matters:

- (1) Exploration of settlement possibilities.
- (2) Preparations of stipulations.
- (3) Clarification of issues.
- (4) Rulings on identity and limitation of the number of witnesses.
- (5) Objections to proffers of evidence.
- (6) Order of presentation of evidence and cross-examination.
- (7) Rulings regarding issuance of subpoenas and protective orders.
- (8) Schedules for the submission of written briefs and schedules for the commencement and conduct of the hearing.

(9) Exchange of witness lists and of exhibits or documents to be offered in evidence at the hearing.

(10) Motions for intervention.

(11) Exploration of the possibility of using alternative dispute resolution provided in Article 5 (commencing with Section 11420.10) of, or the informal hearing procedure provided in Article 10 (commencing with Section 11445.10) of, Chapter 4.5, and objections to use of the informal hearing procedure. Use of alternative dispute resolution or of the informal hearing procedure is subject to subdivision (d).

(12) Any other matters as shall promote the orderly and prompt conduct of the hearing.

(c) The administrative law judge may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in and to hear the entire proceeding while it is taking place.

(d) With the consent of the parties, the prehearing conference may be converted immediately into alternative dispute resolution or an informal hearing. With the consent of the parties, the proceeding may be converted into alternative dispute resolution to be conducted at another time. With the consent of the agency, the proceeding may be converted into an informal hearing to be conducted at another time subject to the right of a party to object to use of the informal hearing procedure as provided in Section 11445.30.

(e) The administrative law judge shall issue a prehearing order incorporating the matters determined at the prehearing conference. The administrative law judge may direct one or more of the parties to prepare a prehearing order.

11511.7 SETTLEMENT CONFERENCES

(a) The administrative law judge may order the parties to attend and participate in a settlement conference. The administrative law judge shall set the time and place for the settlement conference, and shall give reasonable written notice to all parties.

(b) The administrative law judge at the settlement conference shall not preside as administrative law judge at the hearing unless otherwise stipulated by the parties. The administrative law judge may conduct all or part of the settlement conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in and to hear the entire proceeding while it is taking place.

11512 PRESIDING OFFICER; PARTICIPATION OF AGENCY IN HEARING; CONDUCT OF HEARING; DISQUALIFICATION OF ADMINISTRATIVE LAW JUDGE OR AGENCY MEMBER; REPORTER; PROPOSED DECISION

(a) Every hearing in a contested case shall be presided over by an administrative law judge. The agency itself shall determine whether the administrative law judge is to hear the case alone or whether the agency itself is to hear the case with the administrative law judge.

(b) When the agency itself hears the case, the administrative law judge shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the agency on matters of law; the agency itself shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the administrative law judge. When the administrative law judge alone hears a case, he or she shall exercise all powers relating to the conduct of the hearing. A ruling of the administrative law judge admitting or excluding evidence is subject to review in the same manner and to the same extent as the administrative law judge's proposed decision in the proceeding.

(c) An administrative law judge or agency member shall voluntarily disqualify himself or herself and withdraw from any case in which there are grounds for disqualification, including disqualification under Section 11425.40. The parties may waive the disqualification by a writing that recites the grounds for disqualification. A waiver is effective only when signed by all parties, accepted by the administrative law judge or agency member, and included in the record. Any party may request the disqualification of any administrative law judge or agency member by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that the administrative law judge or agency member is disqualified. Where the request concerns an agency member, the issue shall be determined by the other members of the agency. Where the request concerns the administrative law judge, the issue shall be determined by the agency itself if the agency itself hears the case with the administrative law judge, otherwise the issue shall be determined by the administrative law judge. No agency member shall withdraw voluntarily or be subject to disqualification if his or her disqualification would prevent the existence of a quorum qualified to act in the particular case, except that a substitute qualified to act may be appointed by the appointing authority.

(d) The proceedings at the hearing shall be reported by a stenographic reporter. However, upon the consent of all the parties, the proceedings may be reported electronically.

(e) Whenever, after the agency itself has commenced to hear the case with an administrative law judge presiding, a quorum no longer exists, the administrative law judge who is presiding shall complete the hearing as if sitting alone and shall render a proposed decision in accordance with subdivision (b) of Section 11517.

11513 EVIDENCE; EXAMINATION OF WITNESSES

(a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have these rights: to call and examine witnesses, to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her. If respondent does not testify in his or her own behalf he or she may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.

(d) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration.

(e) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing.

(f) The presiding officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

11514 AFFIDAVITS

(a) At any time 10 or more days prior to a hearing or a continued hearing, any party may mail or deliver to the opposing party a copy of any affidavit which he proposes to introduce in evidence, together with a notice as provided in subdivision (b). Unless the opposing party, within seven days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine an affiant, his right to cross-examine such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant has testified orally. If an opportunity to cross-examine an affiant is not afforded after request therefor is made as herein provided, the affidavit may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.

(b) The notice referred to in subdivision (a) shall be substantially in the following form:

The accompanying affidavit of (name of affiant) will be introduced as evidence at the hearing in (title of proceeding). (Name of affiant) will not be called to testify orally and you will not be entitled to question him unless you notify (name of proponent or his attorney) at (address) that you wish to cross-examine him. To be effective your request must be mailed or delivered to (name of proponent or his attorney) on or before (insert a date seven days after the date of mailing or delivering the affidavit to the opposing party).

11515 OFFICIAL NOTICE

In reaching a decision official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the agency's special field, and of any fact which may be judicially noticed by the courts of this State. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed

matters by evidence or by written or oral presentation or authority, the manner of such refutation to be determined by the agency.

11516 AMENDMENT OF ACCUSATION AFTER SUBMISSION OF CASE

The agency may order amendment of the accusation after submission of the case for decision. Each party shall be given notice of the intended amendment and opportunity to show that he will be prejudiced thereby unless the case is reopened to permit the introduction of additional evidence in his behalf. If such prejudice is shown the agency shall reopen the case to permit the introduction of additional evidence.

11517 CONTESTED CASE; ORIGINAL HEARING; AGENCY OR ADMINISTRATIVE LAW JUDGE

(a) A contested case may be originally heard by the agency itself and subdivision (b) shall apply. Alternatively, at the discretion of the agency, an administrative law judge may originally hear the case alone and subdivision (c) shall apply:

(b) If a contested case is originally heard before an agency itself, all of the following provisions apply:

(1) An administrative law judge shall be present during the consideration of the case and, if requested, shall assist and advise the agency in the conduct of the hearing.

(2) No member who did not hear the evidence shall vote on the decision.

(3) The agency shall issue its decision within 100 days of submission of the case.

(c)(1) If a contested case is originally heard by an administrative law judge alone, he or she shall prepare within 30 days after the case is submitted to him or her a proposed decision in a form that may be adopted by the agency as the final decision in the case. Failure of the administrative law judge to deliver a proposed decision within the time required does not prejudice the rights of the agency in the case. Thirty days after receipt by the agency of the proposed decision, a copy of the proposed decision shall be filed by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney. The filing and service is not an adoption of a proposed decision by the agency.

(2) Within 100 days of receipt by the agency of the administrative law judge's proposed decision, the agency may act as prescribed in subparagraphs (A) to (E), inclusive. If the agency fails to act as prescribed in subparagraphs (A) to (E), inclusive, within 100 days of receipt of the proposed decision, the proposed decision shall be deemed adopted by the agency. The agency may do any of the following:

(A) Adopt the proposed decision in its entirety.

(B) Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision.

(C) Make technical or other minor changes in the proposed decision and adopt it as the decision. Action by the agency under this paragraph is limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision.

(D) Reject the proposed decision and refer the case to the same administrative law judge if reasonably available, otherwise to another administrative law judge, to take additional evidence. If the case is referred to an administrative law judge pursuant to this subparagraph, he or she shall prepare a revised proposed decision, as provided in paragraph (1), based upon the additional evidence and the transcript and other papers that are part of the record of the prior hearing. A copy of the revised proposed decision shall be furnished to each party and his or her attorney as prescribed in this subdivision.

(i) A copy of the record shall be made available to the parties. The agency may require payment of fees covering direct costs of making the copy.

(ii) The agency itself shall not decide any case provided for in this subdivision without affording the parties the opportunity to present either oral or written argument before the agency itself. If additional oral evidence is introduced before the agency itself, no agency member may vote unless the member heard the additional oral evidence.

(iii) The authority of the agency itself to decide the case under this subdivision includes authority to decide some but not all issues in the case.

(iv) If the agency elects to proceed under this subparagraph, the agency shall issue its final decision not later than 100 days after rejection of the proposed decision. If the agency elects to proceed under this subparagraph, and has ordered a transcript of the proceedings before the administrative law judge, the agency shall issue its final decision not later than 100 days after receipt of the transcript. If the agency finds that a further delay is required by special circumstance, it shall issue an order delaying the decision for no more than 30 days and specifying the reasons therefor. The order shall be subject to judicial review pursuant to Section 11523.

(d) The decision of the agency shall be filed immediately by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney.

11518 DELIVERY OF COPIES TO PARTIES

Copies of the decision shall be delivered to the parties personally or sent to them by registered mail.

11518.5 APPEALS FOR CORRECTION OF MISTAKE OR CLERICAL ERROR

(a) Within 15 days after service of a copy of the decision on a party, but not later than the effective date of the decision, the party may apply to the agency for correction of a mistake or clerical error in the decision, stating the specific ground on which the application is made. Notice of the application shall be given to the other parties to the proceeding. The application is not a prerequisite for seeking judicial review.

(b) The agency may refer the application to the administrative law judge who formulated the proposed decision or may delegate its authority under this section to one or more persons.

(c) The agency may deny the application, grant the application and modify the decision, or grant the application and set the matter for further proceedings. The application is considered denied if the agency does not dispose of it within 15 days after it is made or a longer time that the agency provides by regulation.

(d) Nothing in this section precludes the agency, on its own motion or on motion of the administrative law judge, from modifying the decision to correct a mistake or clerical error. A modification under this subdivision shall be made within 15 days after issuance of the decision.

(e) The agency shall, within 15 days after correction of a mistake or clerical error in the decision, serve a copy of the correction on each party on which a copy of the decision was previously served.

11519 EFFECTIVE DATE OF DECISION; STAY OF EXECUTION; NOTIFICATION; RESTITUTION

(a) The decision shall become effective 30 days after it is delivered or mailed to respondent unless: a reconsideration is ordered within that time, or the agency itself orders that the decision shall become effective sooner, or a stay of execution is granted.

(b) A stay of execution may be included in the decision or if not included therein may be granted by the agency at any time before the decision becomes effective. The stay of execution provided herein may be accompanied by an express condition that respondent comply with specified terms of probation; provided, however, that the terms of probation shall be just and reasonable in the light of the findings and decision.

(c) If respondent was required to register with any public officer, a notification of any suspension or revocation shall be sent to the officer after the decision has become effective.

(d) As used in subdivision (b), specified terms of probation may include an order of restitution. Where restitution is ordered and paid pursuant to the provisions of this subdivision, the amount paid shall be credited to any subsequent judgment in a civil action.

(e) The person to which the agency action is directed may not be required to comply with a decision unless the person has been served with the decision in the manner provided in Section 11505 or has actual knowledge of the decision.

(f) A nonparty may not be required to comply with a decision unless the agency has made the decision available for public inspection and copying or the nonparty has actual knowledge of the decision.

(g) This section does not preclude an agency from taking immediate action to protect the public interest in accordance with Article 13 (commencing with Section 11460.10) of Chapter 4.5.

11520 DEFAULTS AND UNCONTESTED CASES

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent; and where the burden of proof is on the respondent to establish that the respondent is entitled to the agency action sought, the agency may act without taking evidence.

(b) Notwithstanding the default of the respondent, the agency or administrative law judge, before a proposed decision is issued, has discretion to grant a hearing on reasonable notice to the parties. If the agency and administrative law judge make conflicting orders under this subdivision, the agency's order takes precedence. The administrative law judge may order the respondent, or the respondent's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of the respondent's failure to appear at the hearing.

(c) Within seven days after service on the respondent of a decision based on the respondent's default, the respondent may serve a written motion requesting that the decision be vacated and stating the grounds relied on. The agency in its discretion may vacate the decision and grant a hearing on a showing of good cause. As used in this subdivision, good cause includes, but is not limited to, any of the following:

(1) Failure of the person to receive notice served pursuant to Section 11505.

(2) Mistake, inadvertence, surprise, or excusable neglect.

11521 RECONSIDERATION

(a) The agency itself may order a reconsideration of all or part of the case on its own motion or on petition of any party. The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to respondent, or on the date set by the agency itself as the effective date of the decision if that date occurs prior to the expiration of the 30-day period or at the termination of a stay of not to exceed 30 days which the agency may grant for the purpose of filing an application for reconsideration. If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of any of the applicable periods, an agency may grant a stay of that expiration for no more than 10 days, solely for the purpose of

considering the petition. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

(b) The case may be reconsidered by the agency itself on all the pertinent parts of the record and such additional evidence and argument as may be permitted, or may be assigned to an administrative law judge. A reconsideration assigned to an administrative law judge shall be subject to the procedure provided in Section 11517. If oral evidence is introduced before the agency itself, no agency member may vote unless he or she heard the evidence.

11522 REINSTATEMENT OF LICENSE OR REDUCTION OF PENALTY

A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

11523 JUDICIAL REVIEW

Judicial review may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure, subject, however, to the statutes relating to the particular agency. Except as otherwise provided in this section, the petition shall be filed within 30 days after the last day on which reconsideration can be ordered. The right to petition shall not be affected by the failure to seek reconsideration before the agency. On request of the petitioner for a record of the proceedings, the complete record of the proceedings, or the parts thereof as are designated by the petitioner in the request, shall be prepared by the Office of Administrative Hearings or the agency and shall be delivered to petitioner, within 30 days after a request, which time shall be extended for good cause shown, upon the payment of the fee specified in Section 69950 for the transcript, the cost of preparation of other portions of the record and for certification thereof. Thereafter, the remaining balance of any costs or charges for the preparation of the record shall be assessed against the petitioner whenever the agency prevails on judicial review following trial of the cause. These costs or charges constitute a debt of the petitioner which is collectible by the agency in the same manner as in the case of an obligation under a contract, and no license shall be renewed or reinstated where the petitioner has failed to pay all of these costs or charges. The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decision by an administrative law judge, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case. Where petitioner, within 10 days after the last day on which reconsideration can be ordered, requests the agency to prepare all or any part of the record the time within which a petition may be filed shall be extended until 30 days after its

delivery to him or her. The agency may file with the court the original of any document in the record in lieu of a copy thereof. In the event that the petitioner prevails in overturning the administrative decision following judicial review, the agency shall reimburse the petitioner for all costs of transcript preparation, compilation of the record, and certification.

11524 CONTINUANCES; GOOD CAUSE; JUDICIAL REVIEW

(a) The agency may grant continuances. When an administrative law judge of the Office of Administrative Hearings has been assigned to the hearing, no continuance may be granted except by him or her or by the presiding judge of the appropriate regional office of the Office of Administrative Hearings, for good cause shown.

(b) When seeking a continuance, a party shall apply for the continuance within 10 working days following the time the party discovered or reasonably should have discovered the event or occurrence which establishes the good cause for the continuance. A continuance may be granted for good cause after the 10 working days have lapsed if the party seeking the continuance is not responsible for and has made a good faith effort to prevent the condition or event establishing the good cause.

(c) In the event that an application for a continuance by a party is denied by an administrative law judge of the Office of Administrative Hearings, and the party seeks judicial review thereof, the party shall, within 10 working days of the denial, make application for appropriate judicial relief in the superior court or be barred from judicial review thereof as a matter of jurisdiction. A party applying for judicial relief from the denial shall give notice to the agency and other parties. Notwithstanding Section 1010 of the Code of Civil Procedure, the notice may be either oral at the time of the denial of application for a continuance or written at the same time application is made in court for judicial relief. This subdivision does not apply the Department of Alcoholic Beverage Control.

11526 VOTING BY MAIL OR OTHER METHOD

The members of an agency qualified to vote on any question may vote by mail or another appropriate method.

11527 CHARGE AGAINST FUNDS OF AGENCY

Any sums authorized to be expended under this chapter by an agency shall be a legal charge against the funds of the agency.

11528 OATHS

In any proceedings under this chapter any agency, agency member, secretary of an agency, hearing reporter, or administrative law judge has power to administer oaths and affirmations and to certify to official acts.

69950 TRANSCRIPTION FEE

The fee for transcription for original ribbon copy is eighty-five (\$0.85) for each 100 words, and for each copy for the party buying the original made at the same time, fifteen cents (\$0.15) for each 100 words. The fee for a first copy to any other person shall be twenty cents (\$0.20) for each 100 words, and for each additional copy, made at the same time, fifteen cents (\$0.15) for each 100 words.

**SPECIFIC OFFENSES LISTED IN
SECTIONS 44010, 44011, and 44424
OF THE EDUCATION CODE**

44010. "SEX OFFENSE"

"Sex offense," as used in Sections 44020 (Private School Hiring Employee Convicted of Sex Offense), 44237 (Fingerprints; Private School Employees), 44346 (Grounds for Denial of Credential), 44425 (Conviction of Sex or Controlled Substance Offense as Grounds for Revocation by Commission), 44436 (Conviction of Sex Offense or Controlled Substance Offense as Grounds for Revocation and Suspension by County Board), 44836 (Employment of Persons Convicted of Sex Offenses or Controlled Substance Offenses), 45123 (Employment After Conviction of Sex Offense or Controlled Substance Offense: Rehabilitated Controlled Substance Offender), and 45304 (Written Charges for Suspension, Demotion, or Dismissal: provisions for Suspension Pending Determination of Sex Offense or Controlled Substance Offense), means any one or more of the offenses listed below:

PENAL CODE

220	Assault to Commit Rape
243.4(a) (b) (c)	Sexual Battery
261(1)	Rape: Victim Incapable of Giving Consent
261(2)	Rape by Force/Fear
261(3)	Rape of Drugged Victim
261(4)	Rape: Victim Unconscious of the Nature of the Act
261.5	Unlawful Sexual Intercourse with Minor
262	Rape of Spouse by Force/Fear/Threat
264.1	Aiding and Abetting Rape
266	Entice Minor Female for Prostitution/etc.
266j	Providing or Transporting Child Under 16 for Purpose of Lewd or Lascivious Act
267	Abduct Minor for Prostitution
272	Causing, Encouraging or Contributing to the Delinquency of Person Under 18 (if involves Lewd & Lascivious Conduct)
285	Incest
286	Sodomy

288	Lewd or Lascivious Acts with Child Under 14 Years
288a	Oral Copulation
289	Penetration by Foreign Object
311.1	Sent or Brought into State for Sale or Distribution, Matter Depicting Sexual Conduct by Minor
311.2	Sending or Bringing into State for Sale or Distribution; Matter Depicting Sexual Conduct by Minor
311.3	Sexual Exploitation of Child
311.4	Employment or Use of Minor to Perform Prohibited Acts
311.2(b)(c)(d)	Depicting Minor in Obscene Material
311.10	Advertising for Sale or Distribution Obscene Matter Depicting a Person Under the Age of 18 years Engaging in or Simulating Sexual Conduct
311.11	Possession or Control of Matter Depicting Minor Engaging or Simulating Sexual Conduct
313.1	Distribute Harmful Matter to Minors
314	Lewd or Obscene Conduct; Indecent Exposure; Obscene Exhibitions
647.6	(After 1-1-88) Annoy/Molest Children
647a	(Before 12/31/87) Annoy/Molest Children
647b	Loitering about Adult Schools; Molesting of Pupils
647(a)	Disorderly Conduct: Solicit Lewd Act
647(d)	Disorderly Conduct: Loiter In or About Toilet
(b) 647(5)	(Before 9/1961) Vagrancy, Lewd: Solicitation of Homosexual Activity
311(2)	(Before 9/1961) Procuring Another's Lewd Exposure or Excitation of Lewd Thoughts
(c) 314	(After 9/1961) Indecent Exposure
(d) 311(1)	(After 9/1955 but before 9/15/1961) Indecent Exposure

(e) 272

(After 9/1961) Contributing to the Delinquency of a Minor Involving Lewd or Lascivious Conduct

- (f) WELFARE AND INSTITUTIONS CODE 702 (Before 9/1961) Contributing to the Delinquency of a Minor Involving Lewd and Lascivious Conduct
- (g) PENAL CODE 286 Sodomy, 288a Oral Copulation (Before 1975)
- (h) Any attempt to commit any of the above mentioned offenses.
- (i) Any commission or attempt in another state which, if committed in California would have been punishable as one or more of the above-mentioned offenses.
- (j) Any conviction resulting in requirement to register as a sex offender pursuant to Section 290 of the Penal Code.
- (k) Commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of the Welfare and Institutions Code, as repealed by Chapter 928 of the Statutes of 1981.

44011. "CONTROLLED SUBSTANCE OFFENSE"

"Controlled Substance Offense" as used in Sections 44346 (Grounds for Denial of Application), 44425 (Conviction of Sex or Controlled Substance Offense as Grounds for Revocation of Credential), 44436 (Conviction of Sex Offense or Controlled Substance Offense as Grounds for Revocation and Suspension by County Board), 44836 (Employment After Conviction of Sex Offense or Controlled Substance Offense), 45123 (Employment After Conviction of Sex Offense or Controlled Substance Offense: Rehabilitated Controlled Substance Offender), means any one or more of the following offenses:

HEALTH AND SAFETY CODE

- (a) 11350 Possess Narcotic Controlled Substance
- 11351 Possess/Purchase Narcotic Controlled Substance for Sale
- 11351.5 Possession of Cocaine for Sale
- 11352 Transport/Sell Narcotic Controlled Substance
- 11353 Adult Give/etc. Narcotic Controlled Substance to Minor
- 11353.5 Adult Give/etc. Controlled Substance to Minor Under 14 Years During School Activity
- 11354(a) Minor Give/etc. Narcotic Controlled Substance to Minor
- 11355 Sell/etc. in Lieu of Controlled Substance

11361	Employ Minor Under 14 Years or Age to Transport/Sell/Etc.
11366	Keep Place to Sell/etc. Controlled Substance
11368	Forge/Alter Narcotic Prescription
11377(a)	Possess Controlled Substance
11378	Possess Controlled Substance for Sale
11378.5	Possess Phencyclidine for Sale
11379	Transport/Sell Controlled Substance
11379.5	Transport/Sell/Etc. Phencyclidine
11379.6(a)	Manufacture/Etc. Controlled Substances
11380(a)	Use/Etc. Minor to Violate Controlled Substance Act
11380.5(a)	Furnish/Etc. Minor with Specific Controlled Substance
11382	Sell/Etc. in Lieu of Controlled Substance
11550	Use/Under Influence of Controlled Substance
(b)	Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punished as one or more of the above-mentioned offenses.
(c)	Any offenses committed under former Sections:
11500	Unlawful Possession of a Controlled Substance
11500.5	Unlawful Possession of Controlled Substance for Sale
11501	Unlawful Transportation of Controlled Substance
11502	Inducement of Minor's Violation of Controlled Substance Law
11502.1	Inducement of Minor's Violation of Controlled Substance Law
11503	Unlawful Sale, Transportation, etc. of Controlled Substance
11557	Operating or Maintaining Place for Dispensing Controlled Substance
11715	Forging or Altering Prescription

(d) Any attempt to commit any of the above-mentioned offenses.

**44424. CONVICTION OF CRIME AS GROUND FOR REVOCATION BY
COMMISSION**

(a) Upon the conviction of the holder of any credential issued by the State Board of Education or the Commission on Teacher Credentialing of a violation, or attempted violation, of a violent or serious felony as described in Section 44346.1, or any one or more of the following Penal Code Sections, the Commission shall forthwith revoke the credential:

PENAL CODE

187(a) to 191	Murder
192(a)	Voluntary Manslaughter Only
193	Manslaughter--Punishment
194	Death of Victim Within 3 Years and a Day
203	Mayhem
207	Kidnapping
209(a)	Kidnapping for Ransom
209(b)	Kidnapping to Commit Robbery
210	Pose as Kidnapper to Extort
210.5	Hostages
211	Robbery
212.5	Robbery
214	Train Robbery
217.1	Assault on Governmental Officers
220	Assault to Commit Mayhem, Rape, Sodomy, Oral Copulation, Rape in Concert with Force, Lewd or Lascivious Act on Child, Penetrate with Foreign Object
222	Give Drugs to Aid in Felony
244	Assault with Caustic Chemicals
245	Assault with Deadly Weapon or with Great Bodily Injury
261	Rape: Victim Incapable of Giving Consent

261.5	Unlawful Sexual Intercourse with Minor (Statutory Rape)
262	Spousal Rape
264.1	Rape in Concert with Force/Violence
265	Abduct Women for Marriage/etc.
266	Entice Minor Female for Prostitution/etc.
266a	Take Person for Prostitution Without Consent
266b	Take Person for Illicit Relations
266c	Inducing Consent to Sexual Act by Fraud or Fear
266d	Receive Money for Cohabitation Placement
266e	Pay for Prostitution/etc.
266f	Sell Person for Immoral Purpose
266g	Place Wife in Brothel
266h	Pimping
266i	Pandering
266j	Procure/etc. Child Under 14 Years for Lewd or Lascivious Acts
267	Abduct Minor for Prostitution
272	Contribute to the Delinquency of a Minor (if including Lewd & Lascivious Conduct)
273a	Willful Cruelty to Child with Great Bodily Injury/Death
273ab	Assault Resulting in Death of Child under 8
273d	Corporal Punishment or Injury of Child
273f	Send Minor to Immoral Place
273g	Immoral Acts Before Child
278	Child Stealing
285	Incest
286	Sodomy
286.5	Sexual Assault on Animal
288	Lewd or Lascivious Acts With Child Under 14 Years

288.2	Providing Lewd Telephone Messages or Other Material to Minor
288.5	Continuous Sexual Abuse of Child
288a	Oral Copulation
424	Embezzlement by Public Officer
425	Fail to Pay Public Money
484	Theft of Personal Property, Felony Only
484b	Diversion of Funds, Felony Only
484c	Obtain Money by False Voucher, Felony Only
484e	Theft of Access Card, Felony Only
484f	Forge Access, Felony Only
484g	Fraudulent Use of Access Card, Felony Only
484h	Access Card Offenses by Retailer, Felony Only
484i	Possess Access Card Equipment, Felony Only
484j	Publication of Access Card Number with Intent to Defraud, Felony Only
484.1	False Representation to Pawnbroker, Felony Only
485	Appropriate Lost Property, Felony Only
487	Grand Theft: Property, Felony Only
487a	Grand Theft: Animal Carcass, Felony Only
487b	Grand Theft: Convert Real Property, Felony Only
487d	Grand Theft: Gold Dust/etc., Felony Only
487e	Grand Theft: Dog, Felony Only
487g	Grand Theft: Dog for Sale or Research, Felony Only
488	Petty Theft, Felony Only
503	Embezzlement
504	Embezzlement Property by Public/Private Officer
... or any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this	

state, would have been published as one or more of the offenses specified in this section.

44346.1 CREDENTIALS; APPLICANTS CONVICTED OF VIOLENT OR SERIOUS FELONY; CERTIFICATE OF REHABILITATION AND PARDON

The Commission shall deny any application for the issuance of a credential made by an applicant who has been convicted of a violent or serious felony or a crime set forth in subdivision (a) of Section 44424 or whose employment has been denied or terminated pursuant to Section 44830.1.

PENAL CODE SECTION 667.5 (For complete listing please refer to the Penal Code)

187	Murder
664/187	Attempted Murder
192(A)	Voluntary Manslaughter
203	Mayhem
205	Aggravated Mayhem
207	Kidnapping
208	Kidnapping
212.5	Robbery
215	Carjacking
261	Rape
262(A)	Rape of Spouse
264.1	Rape in Concert with Force
286	Sodomy
288A	Oral Copulation
288(A)	Lewd or Lascivious Acts with Child Under 14 Years
288.5	Continuous Sexual Assault of Child
289	Sexual Penetration With Foreign Object
451(A)	Arson Causing Great Bodily Injury
12308	Use Destructive Device with Intent to Murder

664/187	Attempted Murder
187	Murder
192(a)	Voluntary Manslaughter
203	Mayhem
211	Robbery
212.5	Robbery
215	Carjacking
220	Assault to Commit Rape in Concert with Force
245(a)(2)	Assault with Firearm on Person
245(c)	Assault with Deadly Weapon Not a Firearm Likely to Produce Great Bodily Injury on Police Officer/Fireman
245(d)	Assault with Firearm on Peace Officer/Firefighter
246	Shoot at Inhabited Dwelling Vehicle/Etc.
261	Rape
286	Sodomy
288A	Oral Copulation
288(A)	Lewd or Lascivious Acts with Child Under 14 Years
289	Sexual Penetration with Foreign Object with Force
451	Arson
459	Burglary: First Degree
487(d)	Grand Theft Involving a Firearm
4500	Assault by Life Prisoner
4501	Assault with Deadly Weapon by Prisoner
4503	Confined Person Holds Hostage
12308	Use Destructive Device with Intent to Murder
12309	Use Destructive Device Causing Great Bodily Injury
12310	Destructive Device Causing Death

**CITATIONS OF LEADING CASES
ON PROFESSIONAL PRACTICES**

**SHORT
TITLE**

CITATIONS--QUICK DIGEST

BRENNAN

Governing Board of Nicasio School District of Marin County v Brennan
(1971) 18 Cal.App.3d 396

Marijuana; meaning of unprofessional conduct and moral turpitude: Harmful to welfare of school community indicating unfitness to teach.

CALDERON

Board of Education of El Monte School District of Los Angeles v Calderon
(1973) 35 Cal. App.3d 490

Acquittal of criminal charges is not res judicata nor collateral estoppel to bar dismissal for same acts or omissions. "Beyond reasonable doubt"

CARTWRIGHT

Cartwright v Board of Chiropractic Examiners
(1976) 16 Cal.3d 762

When a conviction involves moral turpitude so as to warrant revocation or suspension of license to practice profession cannot be determined in abstract but depends upon whether the conviction demonstrated unfitness to practice that profession.

Plea of nolo may not be basis for revocation or suspension unless a statute expressly authorizes such conviction as basis. But see PC 1016(3) Re Felony Nolo.

CENTRAL VALLEY

Central Valley v Younger
(1979) 95 Cal.App.3d 212

Arrest records may be maintained by the Department of Justice to aid law enforcement and criminal justice. However, the dissemination to public employers of arrest records containing nonconviction data does not further law enforcement or criminal justice. Information regarding nonconviction data is properly used in law enforcement, but such information may not be considered by public employers. Such intrusion into the right of privacy guaranteed by Cal. Const., Art. I, is not justified by a compelling state interest. Thus, in a class action challenging the state's alleged practice of supplying public employers with arrest records without editing out arrests which did not result in convictions, the trial court committed reversible error in dismissing after granting defendants' demurrer to the complaint without leave to amend. The allegations of the

complaint and the amendment to the complaint stated a prima facie violation of the state constitutional right to privacy.

COMINGS

Comings v State Board of Education
(1972) 23 Cal.App.3d 94

Questions of fitness must be determined on circumstances independent of conviction (of marijuana) because the conviction alone, without a showing that accompanying conduct would support a finding that a teacher is unfit, is not sufficient to substantiate a revocation of credentials.

DI GENOVA

Di Genova v State Board of Education
(1955) 45 Cal. 2d 255

No hearing need be granted where statute mandates revocation upon final conviction of specified offenses. Revocation is a ministerial act in this situation.

ECKERSLEY

Eckersley v Commission for Teacher
Preparation and Licensing
(1977) 3 Civil 16094 (unpublished)

Eckersley was convicted of two counts of Penal Code 272 with finding that the offenses did not involve "lewd and/or lascivious conduct." After probation and receipt of a 1203.4, Commission on Teacher Credential moved for mandatory revocation per Education Code section 44425 (previously 13207). Court restrained mandatory revocation, holding that Eckersley's receipt of a 1203.4 entitled him to a fitness hearing. (The court followed rationale of Newland v Board of Governor's (1977) 19 Cal.301 705 in noting that respondent could not obtain a certificate of rehabilitation for a misdemeanor conviction and so could not be required to do so by the Commission. It was a denial of equal protection to misdemeanants).

ETTINGER

Ettinger v Board of Medical Quality Assurance
(1982) 135 Cal.App.3d 853

The proper level of proof to be applied at the administrative level to revoke or suspend a license should be clear and convincing to a reasonable certainty, and not a mere preponderance of the evidence.

GARDNER

Gardner v Commission on Professional Competence
and Tustin School District
(1985) 164 Cal.App.3d 1035

To dismiss a teacher from a particular school for cause, the proper standard of proof to be applied in the administrative proceeding is the preponderance

or weight of evidence rather than the higher clear and convincing proof to a reasonable certainty required in teacher license revocation proceedings.

METZGER

Board of Trustees Los Angeles Junior College
District of Los Angeles v Metzger
(1972) 8 Cal.3d 206

Dismissal for unprofessional conduct reversed where teacher used allegedly obscene literature in English class. (Decided on absence of substantial evidence)

MOCHSON

Board of Education v Commission on Professional Competence v Mochson
(1982) 127 Cal.App.3d 522

Dismissal of classroom teacher for incompetency and unsatisfactory service. Sets forth 68 particular acts/omissions from which incompetency was established.

MORRISON

MORRISON v STATE BOARD OF EDUCATION
(1969) 1 Cal.3d 214

Meaning of "immoral", "unprofessional", and "moral turpitude" must depend on, and thus relate to, the occupation involved ... No person can be denied government employment because of factors unconnected with the responsibilities of that employment. (See cases cited at P. 234, 235)

MOSER

Moser v State Board of Education
(1972) 22 Cal.App.3d 988

Revocation of credential upheld where P. masturbated in public view in a public place. Held unfitness per se. (See Pryor for discussion of what a public place is)

NEWLAND

Newland v Board of Governors for Community Colleges
(1977) 19 Cal.3d 705

Prior mandatory revocation does not bar later fitness hearing where Penal Code 1203.4 relief is obtained

PATRICIA H.

Patricia H. v Berkeley Unified School District
(1993) 803 F.Supp.1288

Finding of California Commission on Teacher Credentialing that high school teacher molested female students collaterally estopped teacher from denying, in action for hostile sexual harassment in violation of Title IX, that he had molested students. As a teacher and credential holder he had both

notice and opportunity to present evidence under oath.

JACK M.

Board of Education of Long Beach v Jack M.
(1977) 19 Cal.3d 691

Teacher arrested for public sexual offense (homosexual solicitation) but where no charges were filed, not unfit to teach per se (i.e., without fitness hearing), and may not be dismissed without hearing. Evidence showed conformance with Morrison standards.

PETTIT

Pettit v State Board of Education
(1973) 10 Cal.App.3d 29

Unfitness to teach was established by expert testimony consisting of opinion, evidence of three elementary school superintendents, based on D's oral copulation of three men not her husband at a party, and her masked appearance on a TV show advocating adultery and wife swapping.

PICTON

Picton v Anderson Union High School District
50 Cal.App 4th 726 (1996)

A school district's demurrer to a former high school teacher's breach of contract action arising from disclosures the district made to the Commission and the Committee of Credentials, resulting in the suspension of the teacher's credential was properly sustained, even though the settlement agreement between the parties contained a nondisclosure provision specifically providing that the district delete the rape charge from the formal statement of charges, the district was under a legal duty of the teacher's resignation and to provide the Committee of Credentials with all of the facts that pursuant to 5 Cal. Code Regs. Sections 80308, 80310, and 80311, to notify the Commission of the teacher's resignation and to provide the Committee with all of the facts that constituted the cause for the underlying disciplinary action. To the extent the agreement could be construed as foreclosing the transmission of such facts that portion of the agreement was illegal as a matter of public policy and could not be enforced.

PRYOR

Pryor v Municipal Court of Los Angeles
(1979) 25 Cal.3d 238

A closed room made available to different members of the public at successive intervals is not a "place open to the public" within the meaning of PC 647(a).

Discusses meaning of "lewd and dissolute;" 647(a) prohibits such conduct only in a public place...

Offense requires a touching in addition to the solicitation

PURIFOY

Purifoy v State Board of Education
(1973) 30 Cal.App.3d 187

Revocation of credential by State Board resulting in dismissal from position requiring certification qualifications is not lack of due process as to dismissals where revocation was mandatory.

ROBERT G.

Los Angeles County Department of Children
and Family Services v Robert G.
79 Cal.App.4th 1408;
(2000) 94Cal.Rptr.2d 818

"The juvenile court did not abuse its discretion when it granted the petition of a school district to disclose confidential information from a juvenile court file that a school teacher had sexually abused his minor daughters."

"Confidentiality laws regarding the disclosure of juvenile court records are meant to protect the child's privacy and not to protect adults from the consequences of their acts."

In this case, the court determined that the father had no valid argument that the school district should not inform the California Commission on Teacher Credentialing of the juvenile court's finding that he sexually abused his two daughters.

SARAC

Sarac v State Board of Education
(1967) 249 Cal.App.2d 58

Court may exercise independent judgment on weight of evidence; and must be sustained on appeal if there is any credible, competent evidence to support its findings.

One homosexual act on public beach sufficient to justify revocation.

SIMS

People v Sims
(1982) 32 Cal.App.3d 468

Prior administrative trial and decision effects collateral estoppel to subsequent criminal trial on same facts if administrative agency resolved issues of fact and parties had adequate opportunity to litigate their claims. (But prior criminal acquittal does not cut off subsequent administrative trial. See CALDERON, Supra)

SWAN

Board of Education of Los Angeles v Swan
(1953) 41 Cal.2d 546

Dismissal of insubordinate teacher upheld; violation of Rules of Ethical Conduct is "unprofessional conduct"; violation of school rules, defiance of school authority, etc.

STUBBLEFIELD

Board of Trustees v Stubblefield
(1971) 16 Cal.App.3d 820

Heterosexual intercourse in automobile with female student (Jr. College) is immoral conduct showing unfitness to teach.

CARL S.

Carl S. v Commission on Teacher Preparation and Licensing
(1981) 126 Cal.App.3d 365

Revocation of credential by Commission on Teacher Preparation and Licensing set aside where teacher had filed notice of defense but failed to appear at administrative hearing, and uncorroborated hearsay was pressed in support of allegations with his objection. Notice of defense was deemed to be objection to all charges.

VOGULKIN

Vogulkin v State Board of Education
(1961) 194 Cal.App.2d 424

Mandatory revocation or denial of credential to person adjudged a sex psychopath is constitutional.

WACHS

Wachs v Board of Medical Quality Assurance
(1985) 169 Cal.App.3d 219

Diversion per Penal Code 1000.5 goes into effect only upon the successful completion of diversion program, and does not bar disciplinary action where accusation is filed before diversion is completed.

WATSON

Watson v State Board of Education
(1971) 22 Cal.App.3d 559

Six offenses involving alcohol in preceding ten year period, including one offense while application for credential pending was enough to constitute unfitness for teaching.

WOODLAND

Woodland Joint Unified School District v Commission on Professional Competence
(1992) 2 Cal.App.4th 1429

"Evident unfitness for service" means not suited to teaching by reason of temperamental defects or inadequacies. It connotes a fixed character trait.